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Environment & Climate News

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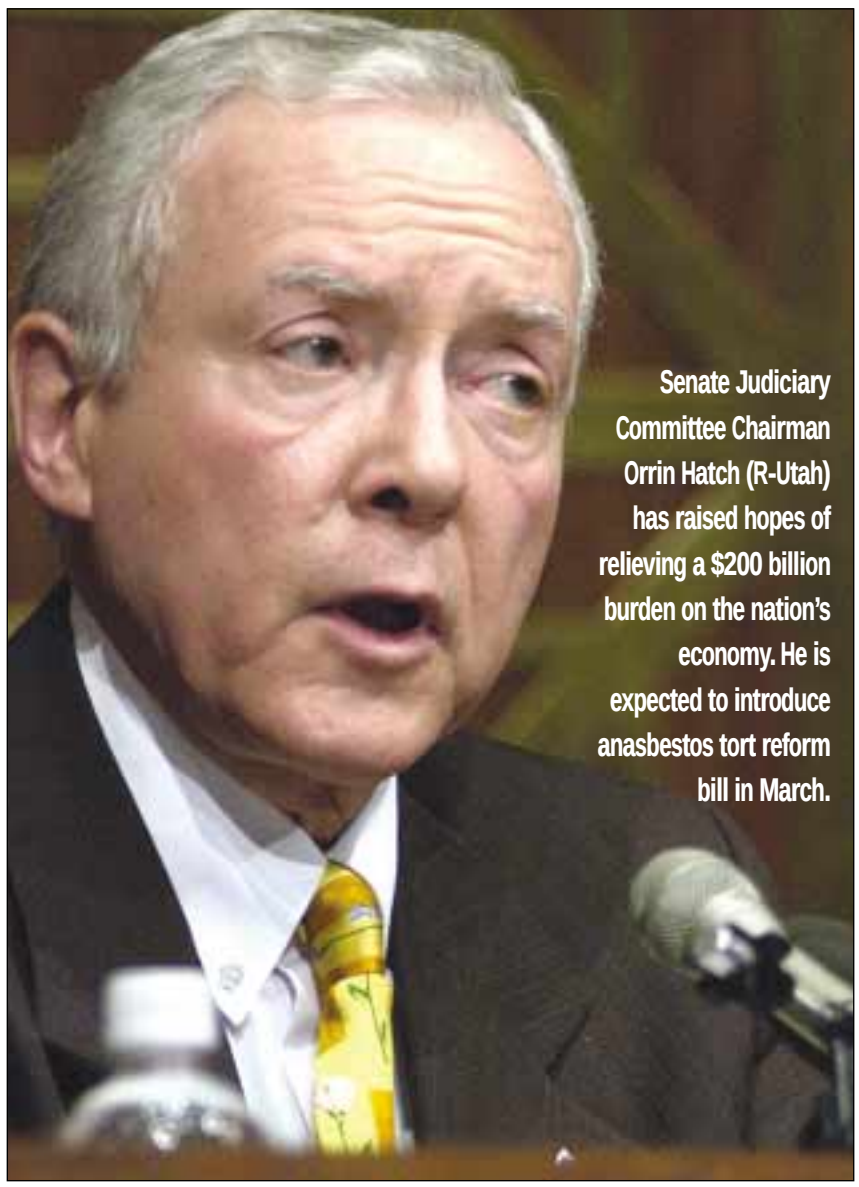
Congress Offers Hope of Asbestos Litigation Reform



Senate Judiciary Committee Chairman Orrin Hatch (R-Utah) has raised hopes of relieving a $200 billion burden on the nation's economy. He is expected to introduce anasbestos tort reform bill in March.

photo/Picture Desk Photos

JAMES M. TAYLOR AND DIANE CAROL BAST

In a January 29 hearing on the state of the U.S. economy, the Senate Budget Committee heard testimony about the $200 billion burden posed by asbestos litigation.

"Out of control asbestos litigation is an anchor weighing down the business community, particularly the manufacturing sector, and slowing down our overall economic recovery," testified Michael Baroody, executive vice president of the National Association of Manufacturers and chairman of the Asbestos Alliance Steering Committee.

Budget Committee Chairman Don Nickles (R-Oklahoma) agreed. "We absolutely must grow the economy to have any hope of eliminating the deficit and preparing for future budget challenges," Nickles said. "There are many things outside the tax code that have real economic consequences, and the escalating problem of asbestos litigation is one of them."

Earlier in the month, Senate Judiciary Committee Chairman Orrin Hatch (R-Utah) had raised hopes of relieving the asbestos burden on the nation's economy. On January 7, Hatch emphasized his desire to pass meaningful asbestos tort reform that would end a litigation crisis that has driven scores of companies into bankruptcy. He is expected to introduce a bill in March.

While Democratic control of the Senate precluded serious efforts to pass reform legislation in the 107th Congress, Republicans' control of the 108th—along with the support of key Democrats—has raised hopes for bipartisan cooperation on the issue.

ASBESTOS continued on page 16

Dems Attack NSR Reform

Rebuffed in Senate, Democrats take their fight to the courts

JAMES M. TAYLOR

The Bush administration's recently announced plans to reform the New Source Review provisions of the Clean Air Act are under assault by activist environmental groups and several northeastern state attorneys general. To date, the proposed rules have withstood the attack, but the battle is far from over.

Attorneys general for nine northeastern states filed a federal lawsuit December 31 in the U.S. Court of Appeals for the District of Columbia, arguing the updated rules run afoul of the Clean

ATTACK continued on page 15

Environmental Regulations Impede Pentagon Readiness

BONNER R. COHEN

With the United States in the second year of its war on terrorism, the nation's ability to prepare troops for the deadly business of combat is being undermined by environmental restrictions being applied to military bases around the country.

Lawsuits brought by such groups as the Center for Biological Diversity and the Natural Resources Defense Council have sought to impose the Endangered Species Act, Migratory Bird Treaty Act, Marine Mammals Protection Act, and other environmental statutes on military bases. The lawsuits, and the restrictions on train-

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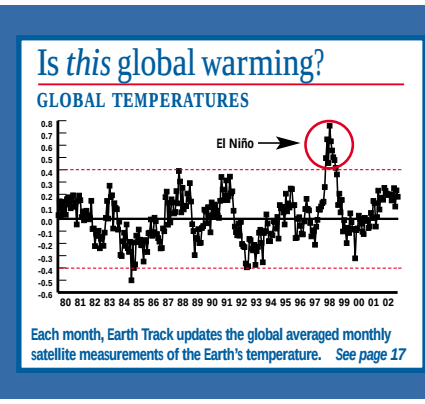

Each month, Earth Track updates the global averaged monthly satellite measurements of the Earth's temperature. *See page 17*

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Science Does Not Justify Ban on DDT

S. FRED SINGER

New Year's Day 2003 marked the thirtieth anniversary of the Environmental Protection Agency's ban on the pesticide DDT.

With malaria striking youngsters in the Washington, DC suburbs last summer, we should remind ourselves that DDT is the most potent weapon against the mosquitoes that spread the disease. The ban was a political decision made by the EPA administrator, acting against the best scientific advice of his own organization.

Today, the United Nations Environmental Program is considering plans to ban DDT in the rest of the world, where malaria annually takes well over two million lives. Worldwide, a child dies of malaria every 30 seconds. In a remarkable departure from its usual uncritical acceptance of extreme environmental positions, the *New York Times* in a December 23 editorial endorsed the plea of public health specialists not to eliminate this most effective weapon against malaria. The World Health Organization opposes a DDT ban.

The history of the sorry decision to ban DDT starts with Rachel Carson and her 1962 book *Silent Spring*. That bestseller, distorting scientific data, galvanized the environmental movement and led to extravagant claims of ecological damage by the newly founded Environmental Defense Fund, long before EDF discovered global warming was a better way to scare the public.

EDF's claim that DDT caused the eggshells of breeding birds to thin was effectively countered by noted biologist Prof. J. Gordon Edwards of San Jose State University. It is ironic, therefore, that the unchecked spread of the mosquito-borne West Nile virus is not only killing dozens of people now but wiping out entire populations of birds that are uniquely susceptible to the virus.

In 1972, EPA hearing examiner Judge Edward Sweeney determined DDT should not be banned. He based that decision on his review of 9,000 pages of scientific testimony. "DDT is not carcinogenic, mutagenic, or teratogenic to man," wrote Sweeney. "[U]ses of DDT do not have a deleterious effect on fish, birds, wildlife or estuarine organisms." Later research has confirmed Sweeney's findings.

With DDT banned, U.S. authorities attempt to control mosquitoes by less-effective insecticides that are toxic, degrade rapidly, and require repeated applications. Poor countries in Africa and elsewhere cannot afford these more costly chemicals and procedures. Millions die and many more become ill, sapping their strength and contributing to the continuing poverty of their nations. Yet even small quantities of DDT, applied to the walls of houses and to mosquito netting, can effectively control the malaria problem.

photo/The International Childcare Trust

A ten-year-old Kenyan boy sits partially paralysed by cerebral malaria. Paralyzed from the waist down, he also has difficulty coordinating his arm movements. The paralysis is permanent and only through rehabilitation and with wheel chairs do victims have any hope of mobility and futures.

"With the growth in international air travel, it is only a matter of time before other nasty diseases are carried to our shores ... So long as epidemics continue in the poorer nations, we are not safe."

During World War II, a Brooklyn-born chemical engineer, the son of Lebanese immigrants, learned how to mass-produce DDT. Joe Jacobs turned a Swiss moth-killing chemical into a potent weapon against all kinds of disease-spreading insects, including lice and fleas, and saved the lives of millions of GIs and European refugees. A 1970 National Academy of Sciences report states: "To only a few chemicals does man owe as great a debt as to DDT. ... [I]n a little more than two decades [after WW II], DDT has prevented 50 million deaths due to malaria that otherwise would have been inevitable."

The inventor of DDT, Paul Hermann Müller, received the Nobel Prize in 1948; Jacobs went on to found a major engineering company and became a leading philanthropist—a "compassionate conservative."

But the battle against insect-borne diseases continues. Both West Nile and the recent outbreak of malaria started near a major international airport. The infected mosquitoes may have been aboard, or perhaps a domestic mosquito bit an infected traveler. With the growth in international air travel, it is only a matter of time before other nasty diseases are carried to our shores: Yellow fever; Dengue; Japanese viral encephalitis; (African) Rift Valley fever—deadly and with no vaccine; (Australian) Ross River fever—no vaccine. So long as epidemics continue in the poorer nations, we are not safe.

Steven Milloy, author of *Junk Science Judo*, has put it well and succinctly: "Judicious use of DDT won't harm people or the environment. It will, however, kill mosquitoes—which is better than mosquitoes killing us."

S. Fred Singer is professor emeritus of Environmental Sciences at the University of Virginia and president of the Arlington, Virginia-based Science &Environmental Policy Project. He is also a visiting Wesson Fellow at the Hoover Institution at Stanford, California.

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GreenWatch Keeps Eye on Environmentalist Funding

JAMES M. TAYLOR

Would you like to learn more about an environmental activist group? Who funds them, and for how much? What is their annual income? How transparent is their funding? For the answers to these questions and more, try GreenWatch, at http://www.greenwatch.org.

GreenWatch, a project of the Washington, DC-based Capital Research Center (CRC), bills itself as an environmental watchdog group. The site offers an extensive database and great tools that help it live up to that claim.

GreenWatch offers a Searchlight Database compiling current information on more than 2,000 groups. Did you know Enron provided funding for People for the Ethical Treatment of Animals (PETA)? Did you know the Natural Resources Defense Council is funded by the Environmental Protection Agency (EPA) and Department of Energy? Did you know the Sierra Club raised more than $63 million in 2000, spent only $28 million of it, and is sitting on more than $85 million in assets? Did you know your taxes fund the Sierra Club, which receives grants from EPA and the U.S. Fish and Wildlife Service?

In addition to providing comprehensive information on funding, grants, and financial status, GreenWatch evaluates each group's ideological viewpoint and organizational transparency. GreenWatch tracks the national media on a daily basis and provides links to noteworthy news items. Additionally, GreenWatch does its own investigative research, exposing financial irregularities in various nonprofit groups.

For example, in September 2002 GreenWatch reported that PETA provided funding for the terrorist Earth Liberation Front (ELF). (See the GreenWatch press release reprinted on this page.) ELF has taken credit for dozens of terrorist acts, including torching buildings, vandalizing homes and automobiles, and threatening the lives of American citizens.

Another good GreenWatch story on PETA ("Political Radicalism and Animal Rights: People for the Ethical Treatment of Animals") can be found at http://www.capitalresearch.org/pubs/pdf/x3762033950.pdf.

Searchlight Results

Environmental Defense provides a good example of the power of GreenWatch's Searchlight Database.

Log on to GreenWatch at http://www.greenwatch.org and enter the words *Environmental Defense* in the yellow Searchlight box at the top right of the screen. "Our most unique feature is the top right search engine," according to GreenWatch content editor David Riggs.

The resulting screen provides Environmental Defense's ideological rating as 4 on a scale of 1 to 8, with 1 being radical left and 8 being market right. For transparency in funding and operations, Environmental Defense is rated 3 on a scale of 1 to 5, with 1 indicating poor performance and 5 indicating high performance.

Below its ideological and transparency ratings, GreenWatch provides links to media articles about Environmental Defense. Below that is the group's background information, including its membership numbers, stated objectives, board members, and most recent annual statement.

Meat and Potatoes

The next section—Environmental Defense's financial numbers—is the "meat and potatoes of the site" according to Riggs. A quick look at the numbers shows why. According to GreenWatch, Environmental Defense raised more than $42 million in 2001 revenue and spent more than $38 million that year. The group's fundraising has been increasing every year, and it currently holds more than $43 million in net assets.

The Corporate Grants section shows that J.P. Morgan & Company and Merrill Lynch, among others, have financed Environmental Defense.

The Foundation Grants section reveals that the David and Lucile Packard Foundation gives several million dollars each year to Environmental Defense. Pew Charitable Trusts has also given multimillion dollar grants.

The Government Grants section is perhaps the most revealing of all. Didn't know the federal government funded non-governmental activist groups? GreenWatch has tracked several million dollars in grants from EPA to Environmental Defense in the past few years alone. Other sources of government grants include the Department of Energy; Department of the Interior/U.S. Fish & Wildlife Service; Department of Commerce/National Oceanic & Atmospheric Administration; and Department of Interior/Bureau of Reclamation. That's right—the federal government taxes your daily wages to support an environmental activist group already sitting on more than $43 million in net assets!

But that's not all. GreenWatch not only documents the numerous gifts EPA has given to Environmental Defense, but also allows you to click on an EPA link that reveals all of the grants the agency makes to various environmental activist groups. EPA gives money to the Audubon Society, Natural Resources Defense Council, Nature Conservancy, and California Indian Basketweavers Association (!), among others. Millions of your tax dollars are given away every year to these groups and more.

GreenWatch is a great source of information for speeches, letters to the editor, opeds, and more. The next time you need to know more about the activist environmental groups that spend their time carping for money and complaining about being dispossessed, click on GreenWatch.org and get the *real* story!

James M. Taylor is managing editor of Environment & Climate News.

Animal Rights Group Admits Funding Domestic Terrorist Group

IRS must revoke group's tax-exempt status, says philanthropy watchdog

BY GREENWATCH

WASHINGTON, DC September 19, 2002 — "We did it. We did it. We gave $1,500 to the ELF," said the president of People for the Ethical Treatment of Animals (PETA), Lisa Lange, on Tuesday, September 17, 2002.

ELF—the Environmental Liberation Front—is one of America's largest domestic terrorist groups, according to the FBI. It has a long history of violence including arson, firebombing, explosives, and attempted murder.

Among the payments PETA has admitted giving to radical ELF activists:

- $5,000 to Josh Harper, convicted of assaulting police and firing on a fishing vessel;
- $2,000 to Dave Wilson, convicted of fire bombing a fur cooperative;
- $7,500 to Fran Trutt, convicted of attempted murder of a medical executive;
- $20,000 to Rodney Coronado, convicted of burning a research laboratory in Michigan.

In early September, ELF admitted setting fire in August to a U.S. Forest Service laboratory in Pennsylvania. The fire destroyed a 70-year-old research facility and caused an additional $700,000 worth of damage.

PETA, which enjoys IRS tax-exempt status as a "501(c)(3)" charity, has openly endorsed ELF activities. In a recent speech, PETA Vice President Bruce Friedrich went on record saying: "I think it would be great if all the fast-food outlets, slaughterhouses, these laboratories and the banks that fund them exploded tomorrow."

Commenting on PETA's support of ELF, Terrence Scanlon, president of philanthropy watchdog Capital Research Center (CRC), said: "The law clearly prohibits a charitable organization from advocating acts that break the law. But PETA has gone further than that and admitted providing financial support to a homegrown terrorist organization: an underground group which according to the FBI operates a number of cells throughout the United States.

"At a time when U.S. law enforcement authorities are watching nonprofits linked to Al Qaeda and other foreign terrorist groups, it is unacceptable that PETA continues to enjoy privileged, tax-exempt status while it openly flouts the law and offers financial assistance to a violent and criminal domestic terrorist group.

"Americans will want to know: Why should PETA's $13 million budget enjoy tax-exempt status? And why should contributions to this group be tax-deductible?"

Commenting on PETA, Daniel Oliver, author of *Animal Rights: the Inhumane Crusade*, a CRC publication, said, "PETA has a long record of extremism. It's more eager to violate human rights than protect animal welfare."

Capital Research Center was established in 1984 to study critical issues in philanthropy, with a special focus on nonprofit "public interest" and public advocacy groups, the funding sources that sustain them, their agendas, and their impact on public policy and society.

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photo/Picture Desk Photos

Craig Rosebraugh (top), former spokesperson for the Earth Liberation Front, was subpoenaed by Representative Scott McInnis (R-Colorado), who wants the U.S. government to expand its war on terrorism to include domestic environmental and animal rights groups. Rodney Coronado (inset) admitted sinking fishing/whaling vessels in Iceland. Coronado learned how to make firebombs in England and has sabotaged logging sites, fur stores, and billboards in the United States and Canada. PETA president Lisa Lange (bottom left) and Vice President Bruce Friedrich (bottom right) admit to funding eco-terrorist groups like ELF. They gave $20,000 to Coronado.

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Lieberman, McCain Introduce Climate Change Measure

photo/Roll Call Photos

Senators Joe Lieberman (D-CT) (right) and John McCain (R-AZ) unveiled legislation on January 8 that they say would curb global warming by establishing a market-based emissions credit trading system.

DIANE CAROL BAST

Senators Joe Lieberman (D-Connecticut) and John McCain (R-Arizona) have introduced the Climate Stewardship Act of 2003, a far-reaching measure that would establish nationwide limits on greenhouse gas emissions, launch a greenhouse gas permit trading system, and promote climate change research through scholarships and new reporting requirements on the Department of Commerce.

The measure, S. 139, was referred to the Senate Committee on Environment and Public Works on January 9.

The bill would require the Environmental Protection Agency to develop regulations to limit greenhouse gas emissions from the electricity generation, transportation, industrial, and commercial sectors of the economy. A Lieberman news release summarizing the bill's provisions notes those sectors were responsible for roughly 85 percent of year 2000 emissions in the U.S.

Among the bill's provisions:

Targets. The bill would set a 2010 emissions target of 5,896 million metric tons of greenhouse gases (measured in terms of carbon dioxide equivalence), the year 2000 emissions level. By 2016, the affected sectors would be expected to reduce emissions to 1990 levels: 5,123 million metric tons.

Allowances. All entities affected by the measure would be required to submit to EPA one tradeable allowance for each metric ton of greenhouse gases emitted. The Secretary of Commerce would be required to determine, subject to allocation factors outlined in the bill, the amount of allowances to be given away or "grandfathered" and the amount to be auctioned. Proceeds from the auction would be used to reduce energy costs of consumers and assist disproportionately affected workers.

Entities would be permitted to satisfy up to 15 percent of their emission reduction requirements through sequestration efforts, or by submitting tradeable allowances from another country's market in greenhouse gases or emission reductions registered by someone other than a covered entity. Credits earned by vehicle manufacturers who exceed Corporate Average Fuel Economy standards by more than 20 percent could also be bought and sold.

Trading. EPA and the Department of Commerce would be required to work out the details of the trading system. The greenhouse gas registry system included in the energy bill passed last year by the Senate would be utilized to establish the system. Companies would report verifiable emission reductions to the registry and trade those reductions on the open market. Entities not affected by the mandatory limits in the bill would be permitted to participate in the trading system after voluntarily reporting their emissions.

Penalty. The measure would penalize companies not meeting their emission limits with a fine for each ton of greenhouse gas emissions over the limit. That fine would be three times the market value of a ton of emissions, based upon the price of emission credits from the trading system provided for in the bill.

FOR MORE INFORMATION

WWW The full text of the 58-page Climate Stewardship Act of 2003 is available through *PolicyBot*. Point your Web browser to **http://www.heartland.org**, click on the *PolicyBot* icon, and search for document #**11541**.

Research. The bill would establish a scholarship program at the National Science Foundation for students studying climate change; an "abrupt climate change" research program at the Department of Commerce; and a program at the National Institute of Standards and Technology for developing standards and measurement technologies. The bill also would require new reports from the Department of Commerce on technology transfer and "the impact of the Kyoto Protocol on the U.S. industrial competitiveness and international scientific cooperation."

Diane Carol Bast is editor of Environment & Climate News.

Congress Battles Itself Over Affordable Energy

BEN LIEBERMAN

Two Congressional events held on January 8—a news conference supporting more federal funding to help the poor pay their winter energy bills and a Senate hearing on a bill to fight global warming—may at first blush appear completely unrelated. But the two are in fact at cross-purposes, as one seeks to make energy more affordable while the other would send energy costs through the roof.

The Northeast-Midwest Congressional Coalition held a press conference drawing attention to the need to replenish the federal Low Income Heating and Energy Assistance Program (LIHEAP). Several legislators want to increase the program's funding from $1.4 to $1.7 billion.

The stated purpose of LIHEAP is laudable: to provide financial assistance to persons unable to pay their energy bills so their heat isn't shut off in the dead of winter. But the program's impact is less clear in practice.

Utilities in most Northern states are forbidden by law from shutting off a customer's electricity or gas during the cold weather months, so LIHEAP assistance is rarely needed to keep people from freezing in their own homes. The program's real beneficiaries are the utilities, who receive taxpayer dollars for energy bills that otherwise would have gone unpaid, and the bureaucrats who administer the program.

Nonetheless, the message that the poor should not have to suffer because of prohibitively expensive energy is a politically powerful one. Yet the message seems to get lost when the subject turns to the environment.

"[I]f Congress feels obligated to take steps to make energy more affordable and available, it should refrain from taking other steps that move us far in the opposite direction."

Costly Global Warming Policy

Thirty years of environmental regulations have greatly increased the cost of energy—often unnecessarily so.

The latest, and by far the largest, attack on affordable energy comes from global warming alarmists. The January 8 hearing in the Senate Commerce, Science and Transportation Committee discussed a measure proposed by Sens. John McCain (R-Arizona) and Joe Lieberman (D-Connecticut) aimed at reducing the use of fossil fuels believed to warm the planet. Their bill would do this by making it more costly to use such carbon-based energy sources.

The McCain-Lieberman measure carries an enormous price tag. Though its initial targets and timetables are not as strict as those in the Kyoto Protocol—the as-yet-unratified multilateral agreement to reduce greenhouse gas emissions—the costs of McCain-Lieberman would be similarly high. The Department of Energy's Energy Information Administration has estimated the Kyoto Protocol would increase energy costs by $77 billion to $338 billion dollars a year.

If the McCain-Lieberman bill becomes law, many more poor—and not so poor—households will be in need of LIHEAP funds. Of course, absent a budget-busting increase in the program's funding, there won't be enough money to go around.

LIHEAP remains a popular program, and the $300 million increase will likely be approved. After all, it is good politics to ensure there is affordable energy for everyone, including the neediest. But if Congress feels obligated to take steps to make energy more affordable and available, it should refrain from taking other steps that move us far in the opposite direction.

Ben Lieberman is a senior policy analyst with the Washington, DC-based Competitive Enterprise Institute.

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Cap and Trade: The Moral Equivalent of Bamboozle

WILLIAM O'KEEFE

At the start of the 108th Congress, Senators John McCain (R-Arizona) and Joe Lieberman (D-Connecticut) held a hearing on climate change in preparation for legislation they have since introduced. The legislation would mandate a cap and trade system for greenhouse gases. The idea is to cap greenhouse gas emissions and let market forces search for a least-cost way of achieving emission limits.

The supporters of cap and trade, including major environmental groups and businesses that expect to profit from it, view this as a moderate action in response to the Bush administration's rejection of the Kyoto Protocol. It is anything but. Rather, the cap-and-trade proposal is an attempt to bamboozle: "to conceal true motives by feigning good intentions."

At the hearing, Lieberman justified his legislative approach by asserting the Bush administration would "allow greenhouse gases to keep increasing indefinitely," while McCain claimed the administration's approach did not "meet the urgency" of the threat from global warming.

The only witnesses permitted to testify at the hearing were those who love government mandates, who distrust markets except when they can use them to enrich themselves, and who see environmental catastrophe on the horizon.

Flawed Assumption

The legislation is based on the assumption that human activities—making things, being a mobile society, owning a home, and creating wealth—are the primary cause of rising temperatures on the planet's surface over the past century. Proponents assert that absent significant corrective action, those same activities will produce environmental catastrophe by 2100.

Since the United States does not intend to participate in the Kyoto Protocol, McCain and Lieberman advocate a mandatory program to reduce greenhouse gas emissions. They assert that nothing short of mandates is sufficiently responsive to the envisioned threat. Their scheme is deeply flawed.

To begin with, it presumes a conclusion about climate change that is not supported by science. The National Academy of Sciences, along with most serious climate scientists, say it is not possible to distinguish potential human impacts from natural variability, and that a significant portion of warming that has occurred in recent decades could be natural.

In addition, the projections of catastrophe these Senators rely on are the result of simulations from computer models that have not been validated scientifically. In the absence of some other agenda, it is difficult to understand why the Senators would put so much faith in models that are based mostly on assumptions rather than knowledge about critical climate processes: water vapor, feedbacks, clouds, aerosols, ocean currents, and solar variability. Knowledge of these processes would seem to be necessary to understand past climate change, to produce realistic models, and to provide a basis for credible projections into the future.

Perception Is Reality

The McCain-Lieberman proposal demonstrates that in politics, perception is reality and facts are negotiable.

Having jumped over facts that don't support their assumptions, McCain and Lieberman combine two flawed policies—the Clinton BTU tax and the Kyoto Protocol—to produce an equally flawed legislative proposal.

Since emissions come from energy use, imposing a cap on emissions means imposing a cap on energy use. Cutting through all of the rhetoric, this is imposed scarcity—in World War II it was called rationing—and the result will be an increase in the cost of energy. A government-mandated increase in the cost of energy is a tax.

In 1993, the Clinton-Gore administration proposed a tax on the BTU content of energy. The tax was designed to force a reduction in energy use. Instead, it provoked a political backlash that forced its abandonment. People clearly understood that their costs of living and working would increase.

At least Clinton-Gore were forthright with their proposal, dubbing it a tax from day one. McCain and Lieberman are less honest, wrapping their tax in scary global warming garb to justify forcing businesses to reduce emissions, and hence energy use, to meet arbitrary targets.

That takes us to the second flawed policy, the Kyoto Protocol, which imposes mandatory targets and timetables on participating developed countries. Ratification by the U.S. would have cost the economy some $200 billion every year. McCain-Lieberman duplicates Kyoto by setting mandatory targets for 2010 and 2016.

With a growing population and growing economy, the McCain-Lieberman mandates could force a reduction in energy use of perhaps 20 percent or more. That would translate into less economic growth and fewer jobs.

Climate change is a legitimate public policy issue meriting congressional debate. But that debate should be based on facts and science; not opinions and rhetoric. The American people are entitled to straight talk on this issue and how to address it. They are not getting it from cap and trade advocates.

William O'Keefe is president of the George Marshall Institute.

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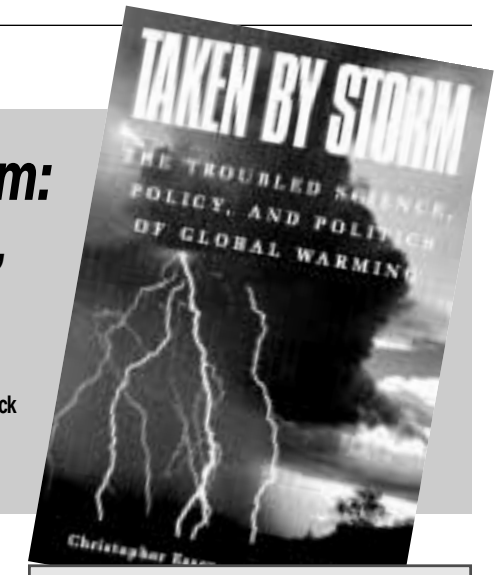
Taken by Storm

Taken by Storm:
The Troubled Science, Policy and Politics of Global Warming

by Christopher Essex and Ross McKitrick
Key Porter Books, November 2002
320 pages paperback



FOR MORE INFORMATION

WWW including links to Web sites that sell the book, point your Web browser to **http://www.takenbystorm.info/**.

BOOK REVIEW BY TERRY FRANCL

Taken by Storm should be required reading for anyone—including the media and especially politicians—who wishes either to discuss or to develop policy concerning global warming.

The two authors are eminently qualified to address the topic. Dr. Christopher Essex is a professor in the Department of Applied Mathematics at the University of Western Ontario, specializing in the underlying mathematics, physics, and computation of complex dynamic processes such as climate. Dr. Ross McKitrick is an associate professor in the Department of Economics at the University of Guelph and a senior fellow of the Fraser Institute in Vancouver, British Columbia, specializing in the application of economic analysis to environmental policy design and climate change.

Essex and McKitrick open their analysis by outlining what they describe as the "Doctrine of Certainty" with respect to the issue of global warming. The Doctrine has nine not-to-be-questioned assertions:

1. The Earth is warming.
2. Warming has already been observed.
3. Humans are causing it.
4. All but a handful of scientists on the fringe believe it.
5. Warming is bad.
6. Action is required immediately.
7. Any action is better than none.
8. Claims of uncertainty in the science merely cover up the ulterior motives of individuals aiming to stop needed action.
9. Those who defend claims of uncertainty are bad people.

Each of the nine assertions, Essex and McKitrick note, is either manifestly false or the claim to know it is false.

Meaningful Data

Having established the Doctrine that drives global warming alarmists, Essex and McKitrick go on to refute the claim of human-induced (anthropogenic) global warming with unusual clarity and in great detail.

They make a key point: that the data said to prove "global temperature" have little, if any, scientific meaning or application. They explain in plain English the shortcomings of each of the data series used to document warming, and the fallacy of applying those data to global climate.

Temperature and climate, they point out, are *local* phenomena, and there is no way to develop a weighted, meaningful average of world or global temperature. They note historical temperature records are largely Northern Hemisphere measurements. Local temperature records do not conform to the rigorous requirements generally assigned to the collection of scientific data. For example, because collection sites tend to be located near large urban populations, they are moved from time to time as populations expand. The temperature record is tainted precisely because dense populations—and the infrastructure that serves them—have an "urban heat island" effect that skews the data.

Temperatures are taken at land-based stations located almost exclusively in the Northern Hemisphere. Land accounts for only about 30 percent of the Earth's mass. Note Essex and McKitrick, "global temperature cannot enter the front door of scientific discourse because it makes no physical sense; it has snuck in a semantic backdoor when no one was looking."

"Note Essex and McKitrick, 'global temperature cannot enter the front door of scientific discourse because it makes no physical sense; it has snuck in a semantic backdoor when no one was looking.'"

Media Myths

Essex and McKitrick point out the media's shortcomings on this issue.

> The *actual* global warming topic is far too complex for media of this nature to treat properly, but there are aspects of it that fit very well in to the commercial imperative of news reportage. If presented in a certain way, it can be used to cultivate alarm about the future. For those who traffic in worry, this makes it a good item to cover once in a while. The treatment of global warming by the media has, from the beginning, been concentrated on coming disasters and gathering doom.

The authors challenge several supposed "truths" about global warming, such as the asserted correlation between carbon dioxide levels and global warming. They point out that there have been periods in history when atmospheric carbon dioxide levels have been markedly higher than those that presently exist and/or are projected; yet glaciation persisted during those periods.

They also note there is no basis whatsoever for the claim that global warming would cause more disruptive weather patterns, the melting of glaciers, an increase in sea levels, insect infestations, or the spread of tropical diseases. Not only do they refute such claims, but they also support their positions with convincing scientific theory, data, and evidence. They point out, for example, that "in the U.S., deaths due to hurricanes and tropical storms are negligible today compared to the period up to the mid-1900s, despite the enormous increase in population located on the storm-prone southeastern U.S. coastline.

"Over the past century, there is no upward trend in the rate of tropical storms impinging on North America. From 1900-1959, there were on average 7.3 extreme hurricanes making landfall in the U.S. per decade. From 1960-96, the average was 5.4 extreme hurricanes per decade. In 2000, no hurricanes made landfall in the U.S. There is no upward trend in the frequency of Atlantic storms, nor is there any upward trend in the severity of storms."

Kyoto Shortcomings

Essex and McKitrick turn next to the alleged solution to global warming: the Kyoto Protocol. They sum up the key problems associated with the Kyoto Protocol as follows:

1. Its goals and results cannot physically be defined or measured.
2. It is inherently unstable and unenforceable.
3. Economic leakages will offset up to half its effects, even if everyone is honest.
4. If parties begin cheating, it is almost impossible to audit them, let alone force them to stop.

Look Before Leaping

In the concluding section of the book, the authors offer these observations:

> As to the question of whether we would "want" to change the climate if we could, we must look at the costs and benefits of small steps. The steps that involve carbon dioxide emission reductions (such as Kyoto) cost more than any benefits they are likely to generate. So they are not worth taking.
>
> So the best policy on global warming is to make sure science is free to investigate it, without having to prove that this or that is relevant to policy issues. Otherwise the best policy is to do nothing unless further information indicates otherwise.

Taken By Storm is one of the most comprehensive and readable publications on the topic of global warming currently available.

Terry Francl is senior economist for the American Farm Bureau Federation.

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Private Companies Take Action Against Global Warming

JAMES M. TAYLOR

Private companies are taking the lead in researching climate change and funding projects that could mitigate the effects of greenhouse gases on the Earth's climate. Several recent efforts are particularly noteworthy.

Electric Companies Planting Forests

Public-private initiatives underway in the lower Mississippi River valley are creating extraordinary opportunities for fish, wildlife, and outdoor enthusiasts alike. These initiatives are also helping to offset anthropogenic (man-made) greenhouse gases, which some people believe may be causing "global warming."

Through voluntary efforts by America's power companies, a number of partnerships were formed with the U.S. Fish and Wildlife Service, National Fish and Wildlife Foundation, Conservation Fund, and others to reforest the lower Mississippi River valley.

Approximately 50,000 acres are being planted with more than 15 million new hardwood trees in the lower river valley. Two hundred years ago, forests covered some 24 million acres. Today, the same area has fewer than 4.5 million acres of fragmented forest.

The reforested land will provide sanctuary, feeding, and resting habitat for wintering and migrating populations of snow geese and more than 18 species of ducks. The new hardwood forests also will create habitat for other types of wildlife and will accommodate such activities as wildlife observation, bird watching, and limited hunting and fishing.

One such reforestation project created America's newest national wildlife reserve this past summer, the Red River National Wildlife Refuge in northwest Louisiana. Entergy—one of the largest producers of electric power in the United States—partnered with the Conservation Fund, the U.S. Fish and Wildlife Service, and Environmental Synergy to acquire 600 acres in a critical migratory bird corridor. More than 180,000 native hardwood trees are being planted to create a natural habitat for the birds.

During their lifetime, the Red River project's 180,000 trees will sequester an estimated 20 million tons—40 billion pounds—of carbon dioxide, a greenhouse gas. All told, the lower Mississippi River valley reforestation projects will absorb an estimated 275,000 tons of carbon dioxide. The projects are one example of actions the U.S. electric utility industry has taken voluntarily to respond to global climate change concerns.

ChevronTexaco Storing Carbon Underground

ChevronTexaco has reported success in its efforts to identify safe and effective methods for storing carbon dioxide in natural underground chambers.

Waleed Jazwari, project director of the IEA Weyburn CO2 Monitoring and Storage Project, reports carbon sequestration is both technologically feasible and environmentally safe. The project, funded by ChevronTexaco and other private and public groups, is testing the viability of storing carbon dioxide in underground chambers that originally held oil and natural gas.

Located at the border of North Dakota and southern Canada, the Weyburn project is demonstrating that sequestered CO2 is unable to escape the chambers. The chambers can hold enormous amounts of CO2 without negative side effects. Jazwari reports the Monitoring and Storage Project has had "very encouraging results midway through the project"; there has yet to be any unforeseen CO2 migration from the underground natural chambers.

Gary Pope, Texaco Centennial Chair in Petroleum Engineering, notes the volume of underground aquifers dwarfs the volume of underground oil and gas chambers. CO2 -saturated water in underground aquifers would be unlikely ever to rise to the surface, says Pope, due to its density and the composition of natural storage chambers. "I think saline water sequestration is a very advanced and promising technology," he adds.

The science of sequestration, however, may be advancing more rapidly than the politics. Sequestration project managers worry that scientific success may be put on hold while politicians wrangle over protests lodged by anti-technology activist groups. "We can't wait 50 years for permits to inject CO2 into the ground," says Craig Lewis, a senior staff scientist in the ChevronTexaco Process Technology Unit. "We don't need another Yucca Mountain situation."

Global Climate and Energy Project

In November 2002, ExxonMobil announced a $100 million grant to Stanford University in furtherance of its research into climate change science. The Stanford grant is in addition to hundreds of millions of dollars ExxonMobil already spends on greenhouse gas research projects.

The new grant will fund the Global Climate and Energy Project (G-CEP), to be led by Stanford University with participation from world-renowned academic research institutions and global companies, including ExxonMobil, General Electric, and Schlumberger.

"We are convinced the Global Climate and Energy Project will make significant academic and private-sector contributions to the development of practical technologies to address the potential long-term risk of climate change," said ExxonMobil Chairman and CEO Lee Raymond. "ExxonMobil is proud to work with a university of the reputation, experience, and ability of Stanford, and to be among the select group of sponsors coming together to make this project happen."

Said Raymond, "We believe that G-CEP will play a cutting-edge role in pushing the frontiers of technology into new generations of energy systems. For ExxonMobil, G-CEP represents a powerful vehicle by which energy science will move forward to find economically attractive technologies that will be successful in the global market and vital to meeting energy needs in the industrialized and developing world."

Said Heartland Institute President Joseph Bast, "This is an impressive show of commitment and sincerity by an energy company that has consistently argued that we need more objective research and less politics and propaganda in the global warming debate.

"Some energy companies are spending hundreds of millions of dollars on advertising campaigns and apologizing for selling oil. Others fund irresponsible environmental groups that don't hesitate to make the most reckless claims about climate change, air pollution, and other environmental issues.

"ExxonMobil has said all along that the science of global warming was uncertain, and that the smartest policy to pursue is to invest in research and let the private sector find alternative fuels when the market says they are needed. This grant shows how seriously the company takes its public statements. It's a model for other companies seeking to be good corporate citizens."

Massachusetts Institute of Technology

As noteworthy as the Stanford grant is, it is just one of many major research projects funded by ExxonMobil. For example, in the early days of the global warming debate, ExxonMobil (then Exxon Corporation) held a series of meetings with another of the nation's leading research universities, the Massachusetts Institute of Technology (MIT), regarding global warming science.

In 1991, after two years of discussions and sharing ideas, ExxonMobil invited MIT to submit a funding request to study the issue. The result is the Joint Program on the Science and Policy of Global Change, which ExxonMobil continues to fund to this day. Other public and private groups also have stepped up to fund the project.

"Both MIT and Exxon strongly supported the objective of creating a program that would integrate the science of climate change, the analysis of its potential effects, and the study of possible policy responses," reported Henry Jacoby, program coordinator and professor of management at MIT's Sloan School of Management.

The Joint Program's goal was to bring together a wide variety of scientific experts and integrate a broad spectrum of public and private entities to produce the most objective and comprehensive research on global warming science. "I like to say that economists, scientists, engineers, and political scientists working together is an unusual act," said Jacoby. "There's got to be a good reason for them to do it, and there is."

"When we began this program, we were really plowing new ground," observed Ronald Prinn, head of MIT's Department of Earth, Atmospheric, and Planetary Sciences. "We are not trying to determine policy. We are trying to conduct very deep and careful scientific analysis ... and let the results fall where they may."

James M. Taylor is managing editor of Environment & Climate News.

photo/Entergy

SOUTHERN HARDWOOD BOTTOMLAND FOREST
As part of its carbon sequestration efforts, New Orleans-based Entergy Corporation last summer financed the replanting of 600 acres in the newly created Red River National Wildlife Refuge in northwest Louisiana with native hardwood species.

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PENTAGON continued from page 1

ing that result from them, have come in direct conflict with military readiness:

- Wide areas of the ocean beach at the Navy's amphibious base at Coronado, California have been designated as "critical habitat" for two species of shore birds, the Western plover and the least tern. When Navy Seals practice landing their rubber boats during breeding season, they must disrupt their tactical formations to move in narrow lanes, marked by green tape, to avoid disturbing potential nests. The result is what the Navy calls "negative training"—the development of bad habits that, if repeated in combat, will cause casualties.
- At Fort Hood, Texas, unit commanders are forced to "work around" 66,000 acres, or one-third of the training area, to protect the habitat of the golden-cheeked warbler and the black-capped vireo. The restrictions placed on soldiers' training reduce the realism of combat exercises and makes them less prepared to cope with real battlefield situations.
- At Camp Pendleton near San Diego, California, the U.S. Fish & Wildlife Service proposed designating more than 57 percent of the base's 125,000 acres as critical habitat for the endangered California gnat-catcher. That designation, coupled with existing environmental restrictions at Camp Pendleton, would have rendered the base virtually unusable for realistic combat training. Ultimately, the Clinton administration decided not to designate new critical habitat at Camp Pendleton—a decision currently being challenged by environmental groups in court.

ESA Particularly Problematic

These examples, to which dozens more could be added, underscore the problems the armed services are facing. The Endangered Species Act is particularly crippling. The courts have held that, under the ESA, critical habitat is intended for species recovery. Rather than military lands being used for military purposes, once critical habitat is designated, such lands must be used first for species recovery. With each lawsuit filed by an environmental group under the ESA, more military land threatens to come under the jurisdiction of the statute.

"Ironically, it is the Defense Department's good stewardship of its lands that has attracted the species ... and the lawsuits. This, of course, is the fate private landowners have suffered for decades."

The Department of Defense manages more than 450 installations on some 25 million acres in the U.S., providing sanctuary to roughly 300 species listed as threatened or endangered. Ironically, it is the Defense Department's good stewardship of its lands that has attracted the species ... and the lawsuits. This, of course, is the fate private landowners have suffered for decades.

Instead of being subjected to the ESA, the Pentagon would like to continue its practice of protecting species on military installations through Integrated Natural Resources Management Plans (INRMPs), which are required under the Sikes Act and developed in close cooperation with the Department of Interior and state wildlife agencies. This approach has been endorsed by both the Clinton and the Bush administrations. The widespread presence of threatened and endangered species on military bases attests to the effectiveness of INRMPs.

Environmental groups opposed to the Pentagon's approach point out the President already has the authority under certain environmental statutes to waive environmental requirements in case of war or national emergency. However, many environmental statutes do not provide for wartime waivers, and in most that do the President may apply national security exceptions only if doing so is deemed to be in the "paramount interest" of the United States—the highest standard in the nation's laws.

Moreover, notes the Pentagon, military readiness requires training and testing at all times—not just during national emergencies. Rather than expecting the President to micro-manage training decisions at scores of military bases around the country, the Pentagon argues, those decisions are best left in the hands of local commanders.

In Congress's Court

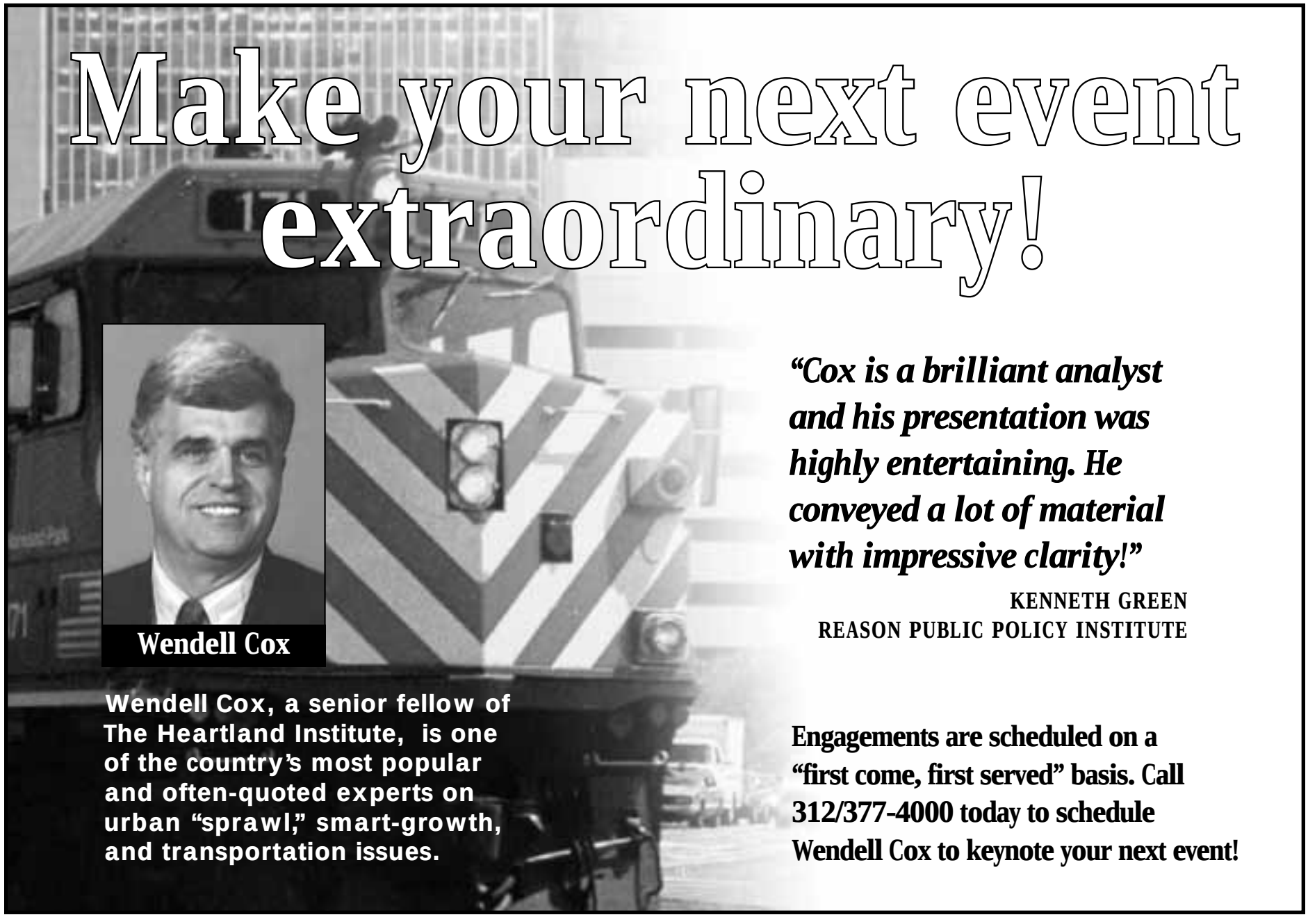
Last summer, the Pentagon approached Congress seeking clarification of several environmental statutes, so that it might carry out its unique mission of providing for the nation's defense.

Faced with midterm elections and a rapidly disappearing congressional calendar, lawmakers last year provided only limited relief by making some adjustments to the Migratory Bird Treaty Act. The action will allow the Navy to continue to use a tiny uninhabited island in the Western Pacific as a firing range.

This year, however, the Department of Defense is taking a much more aggressive stance, hoping a Republican-controlled Congress will lend the armed services a more sympathetic ear.

Ultimately, Congress will have to answer two questions: If soldiers are not allowed to train for combat under realistic conditions in areas specifically set aside for that purpose, where is that training supposed to take place? And if weapons cannot be tested under realistic conditions in areas specifically set aside for that purpose, where is that testing supposed to take place?

Bonner R. Cohen is a senior fellow at the Lexington Institute in Arlington, Virginia.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Madison Commuter Rail: Let Taxpayers Beware!

RANDAL O'TOOLE

How would you feel if you bought a fancy new DVD player for Christmas, only to find the next day the same store was selling another DVD player just as good—but at one-fourth the cost?

If you complain, the salesman who never bothered to tell you about the lower-priced model might snicker and say, "Caveat emptor—let the buyer beware!"

We know salesmen rip us off sometimes. But we don't expect that same sort of behavior from public servants, who are supposed to carefully manage our hard-earned tax dollars. Yet the snickering salesman is exactly what taxpayers are getting in Madison, Wisconsin, with a recent proposal to start rail transit service.

Stagnant Ridership

Madison is a city of 210,000 people in an urban area of 330,000 people, all of whom are located in Dane County. It is home to the flagship campus of the University of Wisconsin system and capital of a state proud of its progressive history. In keeping with that tradition, several members of its city council want to put Madison on the map by building a rail transit line.

Madison Metro Transit buses currently carry about 10 million unlinked trips and 35 million passenger miles per year. Madison roads and streets carry about 2.2 billion vehicle miles per year. At an average occupancy of 1.6 people per car, that represents 3.5 billion passenger miles. Transit represents just 1 percent of the Madison urban area's motorized passenger miles.

Miles of driving are growing at about 2.7 percent per year, but transit ridership has been stagnant for the past 14 years. In the five years before that, transit ridership fell by a quarter. Madison may be a "progressive" university town, but it is not a transit town.

"Transport 2020," an intergovernmental group representing the state of Wisconsin, city of Madison, and Dane County, recently asked Parsons Brinkerhoff to evaluate "transportation alternatives for the Dane County/Greater Madison Metropolitan Area." A planning, engineering, and construction company, Parsons has made millions planning, designing, and engineering light-rail lines in cities all over the country. The firm recently contributed $50,000 to the campaign for Cincinnati light rail.

Expensive New Ridership

To its credit, Parsons did a reasonable evaluation of several alternatives for the Madison area, including improved bus service, exclusive bus ways, light rail, two commuter rail lines, and four commuter rail lines. The firm found almost no differences in ridership between modes. Instead, ridership was more sensitive to frequency of service: Increasing frequencies from between 30 and 60 minutes to between 10 and 20 minutes (or even between 20 and 30 minutes) led to much greater projected increases in ridership than did changing from bus to rail service.

Parsons narrowed its analysis to what it considered the two most promising alternatives: "enhanced and express bus services"; and enhanced buses with two commuter rail lines. The firm compared these with a baseline alternative, called "no build." The results of its analysis are shown in the table below. "Current" is for 2001; the other alternatives are for 2020.

Both the enhanced bus and commuter rail options are projected to carry about 50 percent more riders than the no build option. But commuter rail costs four times as much as the enhanced bus alternative and carries only 2 percent more daily trips. The cost of each new ride carried by the enhanced bus alternative is $1.50. The cost of each additional ride carried by the commuter rail alternative is nearly $65. (Calculated by summing the marginal operating and annualized capital costs and dividing by the new additional riders.)

Parsons delivered its highly quantitative, 200-page report to Transport 2020 in August 2002. In turn, Transport 2020 distributed a 40-page summary report to the public in October 2002. That summary, filled with pretty photographs and colorful charts but few numbers, declared commuter rail to be the "locally preferred alternative."

TRANSPORTATION ALTERNATIVES FOR DANE COUNTY/MADISON

	Daily trips	Annual trips	Capital cost	Operating cost	Local annual cost
Current	31,550	10.3 m	$12.4 m	$28.2 m	$10.1 m
No Build	37,250	12.4 m	$20.0 m	$31.7 m	$12.6 m
Enhanced Bus	55,500	18.5 m	$60.3 m	$36.2 m	$15.6 m
Commuter Rail	56,650	18.8 m	$242.0 m	$39.5 m	$21.1 m

Source: "Transportation Alternatives Analysis for the Dane County/Greater Madison Metropolitan Area Final Report," Parsons Brinkerhoff, 2002, pages 10-22.

Buses Omitted

Also missing from the Transport 2020 summary were any data regarding the enhanced bus alternative. Using the same data as the Parsons report, the summary compared current, no build, and commuter rail, but did not mention the "enhanced/express bus" alternative.

In short, Transport 2020 is telling unwary Madisonians that commuter rail is needed to increase transit ridership by 50 percent. In fact, all commuter rail does is unnecessarily spend $181 million to get less than 2 percent more riders. At a cost per new rider of $1.50, bus enhancements could capture that 2 percent for just $450,000.

Why did Transport 2020 leave the enhanced bus service alternative out of its summary report? Buses can accomplish everything rail can accomplish, at a far lower cost. Buses are superior to commuter rail in almost every way:

- It can take years to start up new rail service, while bus services can be improved in a few weeks to a few months.
- Buses are safer, causing only 54 percent as many fatalities as commuter rail, according to the U.S. Bureau of Transportation Statistics.
- Express buses connecting neighborhoods and communities with downtown and the university can provide most people with 30-mile-per-hour or faster transit service. Rails serve only the people in narrow corridors and, because of intervening stops, average little more than 20 miles per hour.
- Commuter rail in the Madison urban area will actually increase congestion, since the trains will stop traffic seven to 13 times an hour at more than a dozen road crossings along the route.

Buses are inferior to rail in only one respect: They don't cost as much. Some people might spend four times as much on a DVD player to enjoy the status of owning the most expensive brand. You might think that is foolish, but it's their money and they can do what they want with it.

In the same way, transit agencies across the nation have become enthralled with rail service not because it is better, but because it adds to their budgets and prestige. The difference is, it isn't their money.

Transport 2020 wants to needlessly spend hundreds of millions of dollars of my money, your money, and everyone else's money just so Madison can have the status that accompanies a commuter train. Taxpayers will have to pay more than $60 every time a former non-transit rider climbs aboard that train.

On January 21, the Madison Common Council voted to spend another $2.5 million, matched by $2.5 million in additional Dane County funds, for further study by Parsons Brinkerhoff. That same money could have been used to begin making immediate improvements to the bus system. It is time for Madisonians to say, "Caveat adsiduus—let the taxpayer beware!"

*Randal O'Toole (*rot@ti.org*) is senior economist with the Thoreau Institute (*www.ti.org*) and author of the recent book,* The Vanishing Automobile and Other Urban Myths.

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EPA Reexamines Clean Water Act

Responding to a 2001 Supreme Court ruling that the Army Corps of Engineers and Environmental Protection Agency overstepped their bounds in enforcing the Clean Water Act, EPA has gathered and is now evaluating public comments regarding the scope of the Act. At issue is what qualifies as "navigable waters"—a definition at the heart of the Act's application.

Congress based its constitutional authority to pass the Clean Water Act on its power to regulate interstate commerce. The Act forbids the discharge of any pollutant into "navigable waters" without first obtaining a permit from the Army Corps of Engineers. The Act explicitly exempts "normal farming ... and ranching activities, such as plowing" that do not impair the flow or circulation of "navigable waters."

EPA and the Army Corps have consistently defined the term "navigable waters" to mean not just navigable waters themselves, but any tributaries of navigable waters, swamps and wetlands in the general vicinity of navigable waters, and many isolated swamps, wetlands, creeks, and small depressions that hold water only occasionally.

EPA and the Army Corps additionally have defined "pollutant" to include rocks, sand, dirt, and even incidental redepositing of loosened soils back to the same place they came from.

The Supreme Court deemed all this word-smithing to be an overstepping of statutory authority, ruling in 2001 that the Army Corps had no Clean Water Act justification for forbidding an Illinois landowner from filling in an abandoned sand and gravel pit with landfill materials. The Corps had argued that a scattering of ponds had collected on the abandoned mine property; that migratory birds occasionally visited the ponds; and that the birds significantly affected interstate commerce. The Court ruled the presence of migratory birds does not transform an isolated wetland into navigable waters subject to the Clean Water Act; the commerce clause, the Court said, does not apply to non-economic activity within a state's borders.

In response to the Supreme Court's decision, EPA on January 10, 2003 began taking comments on the scope of the Clean Water Act. Comments were to be accepted through February 24.

Not everyone is happy EPA is reexamining its policies in light of the Supreme Court decision. "The Supreme Court decision was a bad one to begin with," stated a January 11 *New York Times* editorial, "but the Clinton administration had applied it very narrowly and concluded that there was no reason to make any change in the existing protections other than the migratory bird rule.

"Homebuilders and others in the real estate development industry had urged the administration to go even further and deny protection to all 'non-navigable' waters including small streams, tributaries, and adjacent wetlands," bemoaned the *Times* editorial.

Countered Gary Garczynski, president of the National Association of Homebuilders, "The federal government cannot require a permit when a landowner wants to fill an isolated wetland that is located only within one state and has no connection to navigation."

Nancy Stoner, director of the Clean Water Project of the Natural Resources Defense Council, argued the Army Corps and EPA were using the Supreme Court ruling to revive an obsolete view of clean water regulations. "The earlier laws were focused on navigability," Stoner observed, without citing any more recent clean water laws that apply to non-navigable waters.

"How seasonal wetlands constitute 'navigable waters' of the United States is a story for another day," deadpanned Jonathan Adler, an assistant professor at Case Western Reserve University.

EPA's reexamination of the Clean Water Act may help it avert additional successful challenges to the Act.

The Supreme Court in December 2002 deadlocked 4-4 on whether a California rancher violated the Clean Water Act when he plowed his fields to plant a fruit orchard. The Army Corps had fined the farmer $1.5 million when he loosened soil on his property, which was in the general vicinity of water, to allow growth of the root systems of his fruit trees. The Court could not reach a majority verdict in the case because Justice Anthony Kennedy was a friend of the farmer and recused himself from the case.

Kennedy had voted with the 5-4 majority in the 2001 case that served as the catalyst for EPA's current taking of public comments. The Court appears ready to make future Clean Water Act decisions consistent with the 2001 case. Without a reexamination of the manner in which they interpret the Clean Water Act, EPA and the Army Corps may find themselves repeatedly losing Supreme Court cases regarding the scope of the Act.

James M. Taylor is managing editor of Environment & Climate News.

WATER, WATER

...and Politics

JAMES M. T

California Considering Des

California's growing population and shrinking Colorado River water supply do not necessarily mean the state will be in a water crisis anytime soon. In addition to greater reliance on traditional water sources, such as mountain snowpacks and neighboring states, the state is clearing the way to build up to five desalination plants by 2007.

Desalination, the process of converting sea water to drinkable fresh water, has long been technologically feasible, but it has been economically prohibitive in all but the most water-stressed regions of the world.

Freshwater sources are relatively abundant in the Western Hemisphere, and local governments invariably subsidize the extraction of water from nearby lakes, rivers, and aquifers. The world's largest and most prevalent desalination plants exist in Saudi Arabia and other parts of the Middle East, where potable water is scarce. But continuing advances in technology are making desalination more economically attractive to western nations, and some American coastal regions in particular.

Florida has led the way in taking advantage of modern desalination technology by approving in 2001 a desalination plant for the Tampa Bay region. Construction is near completion, and the plant is expected to be operating at full capacity in March.

The Tampa Bay plant will be the largest desalination plant in the Western Hemisphere. To create potable water, the plant will take in 44 million gallons of saltwater per day from Tampa Bay. The saltwater will be pumped under great pressure through special membranes that extract the salt and other minerals from the water. Of the 44 million gallons taken in each day, 25 million gallons will be converted to potable water, while the remaining 19 millions gallons will absorb the combined salt extract. This 19 million gallons of briny water will be diluted with 1.4 billion gallons of water discharged every day from the Tampa Electric Company's Big Bend power plant. In the end, the salinity of the power

"Florida has led the way i modern desalination technolo a desalination plant for Construction is near comple expected to be operating at

Texas Hot over U.S.-Mexico

Texas government officials and South Texas farmers are furious that a new water agreement between the U.S. and Mexico fails to address years of broken promises and the latter country's failure to abide by earlier water treaties. Texas officials also claim deceitful accounting will allow Mexico to avoid meeting the terms of the new agreement.

According to the terms of a 1944 treaty, the U.S. provides Mexico with 1.5 million acre-feet of water each year from the Colorado River. In turn, Mexico is required to release 350,000 acre-feet of Rio Grande water each year to the U.S. While the U.S. has lived up to its obligations, Mexico has repeatedly failed to do so. The country currently owes the U.S. more than 1.5 million acre-feet of water, roughly five full years of Rio Grande treaty obligations.

On January 9, the U.S. and Mexico announced Mexico would immediately release the full amount of its 2003 Rio Grande water obligations. However, the agreement does not address the 1.5 million acre-feet of water Mexico failed to provide in previous years. Resolution of that issue has been postponed.

Texas Governor Rick Perry called the agreement

"[Mexico] currently owes 1.5 million acre-feet of wa years of Rio Grande tre

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R EVERYWHERE

s Not Far Behind

M. TAYLOR

Desalination

plant discharge water will increase from 26 parts per thousand, which is consistent with the overall salinity of Tampa Bay, to 26.3 parts per thousand.

"Desalinated seawater is a drought-proof, alternative water supply that can be produced in an environmentally and economically sound manner," states the Tampa Bay water authority.

The Tampa Bay proposal makes sense to local government because technology has advanced to the point that converting saltwater to freshwater is not substantially more expensive than extracting potable water from nearby rivers and the Florida aquifer. Moreover, local governments have become increasingly sensitive to the calls of local environmentalists to alleviate the effects of periodic droughts. For a few extra pennies on the dollar, government officials crafted a solution that would provide freshwater without harming the region's lakes, ponds, rivers, and wells.

The Metropolitan Water District (MWD) of Southern California is watching the Tampa Bay results closely. Although the MWD has tentatively approved the five proposed desalination plants, snags at the Tampa Bay desalination plant or a sister facility currently being built near the Tampa Bay Big Bend facility could cause MWD to change its mind.

The California plants will cost between $70 million and $300 million each. "It is expensive, but it's not something of the other world anymore," said Adam Ortega, an MWD spokesperson. In return, the desalination plants could supply up to 7 percent of MWD water by 2007. "Even though it only represents a small portion of the water we use, it's an additional supply," said MWD Chairman Phillip Pace.

In addition to Florida and California, Texas is researching desalination sites, and New Mexico is considering desalination technology to extract salt from its brackish groundwater. Officials from Iceland, Singapore, and Cyprus have visited the Tampa Bay facility and are reporting on the results to their governments.

> way in taking advantage of chnology by approving in 2001 for the Tampa Bay region. completion, and the plant is g at full capacity in March."

ico Water Agreement

"unacceptable."

"Because of conveyance losses and because Mexico is using what can be best described as an Enron-type accounting to come up with their formula, the amount of water that Texas actually will get is 184,500 acre-feet," said Perry spokesperson Kathy Walt.

"The governor believes this is unacceptable. The governor would like the State Department to continue to press Mexico for delivery of water as is specified under the treaty and to tie all negotiations to a long-term water delivery plan," Walt added.

> y owes the U.S. more than of water, roughly five full de treaty obligations."

"I am pleased that we are at last seeing some sign by the Mexican government to honor its treaty obligations for the new five-year cycle," said Texas Agriculture Commissioner Susan Combs. "I am disappointed but hopeful that they will take steps to repaying the 1.5 million acre-feet of water debt, given that as of December 15, Mexico had 3.169 million acre-feet in accessible storage."

Although there was no agreement to resolve the issue of past water obligations, Mexican authorities stated they would release an additional 50,000 acre-feet of water later this year if they received above-average rainfall this spring in northern Mexico.

Norton Intervenes in Western Water Feud

Interior Secretary Gale Norton cut back California's Colorado River water supply, making good on a promise to intervene in a regional water dispute if California could not reach a water-use agreement with six other Colorado River states.

The Secretary's action, taken January 1, is not expected to pose any immediate strain on the state's water supply. It could, however, cause long-term regional supply issues if the state does not reach an agreement with the other Colorado River states or pursue other means of supplying water to Southern California residents.

More than 70 years ago, California signed an agreement to draw no more than 4.4 million acre-feet of water from the Colorado River each year. Other states also agreed to limit the amount of water withdrawn from the river. Arizona, for example, limited itself to 2.8 million acre-feet per year, and Nevada limited itself to 300,000 acre-feet.

Since the agreement was signed, however, California frequently has withdrawn more than its allotment of water. Other states did not protest because they did not utilize or need all of their allotted water. However, as regional population has grown and neighboring states are beginning to draw their full allotment of Colorado River water, California's practice of exceeding its allotment has strained the system.

Pressed by the Clinton administration to curtail its water use, California agreed to reduce its dependence on the Colorado River by 2015. However, facing a December 31, 2002 deadline to submit specific plans to reduce the state's dependence on the river, various California water districts could not reach agreement on how to do so. Without an explicit agreement in place, Norton followed through on her promise to cut the state's water supply.

A major obstacle to reaching a water-use agreement is the existence of a large lake created in 1905 after the Colorado River burst through a farm dike and poured water for more than a year into arid surrounding land. By the time the dike was fixed, the river water had created California's Salton Sea, a 380-square-mile lake that is 227 feet below sea level and 25 percent saltier than the Pacific Ocean.

The lake has been described as one of the most productive fisheries in the nation, home to corvina, croaker, and tilapia. It serves as an annual rest stop for millions of migratory birds. Despite its disconnection from its Colorado River water source, the lake has survived due to runoff from irrigation projects in California's Imperial Valley.

The Imperial Valley is one of the nation's leading sources of winter fruits and vegetables. It also is one of the chief beneficiaries of California's practice of exceeding its water allotment from the Colorado River. A return by California to its 4.4 million acre-feet water allotment will result in less irrigation water for the Imperial Valley and less resultant runoff into the Salton Sea. Without the irrigation runoff, scientists expect the Sea to steadily contract and become too salty for plant and animal life.

"If you don't have farmers, you don't have a Salton Sea," said Tom Kirk, executive director of the Salton Sea Authority.

California's regional neighbors are opposed to seeing their Colorado River allotments shrink in order to support a man-made lake. California, in turn, has a dual interest in supporting its farmers and preserving the life-sustaining sea, regardless of the circumstances of its creation. The state has yet to seriously consider sustaining the Imperial Valley's water supply through alternative sources, such as the purchase of more water from Northern California or surrounding states.

> "Interior Secretary Gale Norton cut back California's Colorado River water supply, making good on a promise to intervene in a regional water dispute if California could not reach a water-use agreement with six other Colorado River states."

"I truly believe there's such a strong force saying 'Let it die, let it die,'" said retiree Ted Deckers, who lives on the shore of the lake.

The Imperial Irrigation District filed a lawsuit on January 10 asking a federal judge to block Secretary Norton's action.

"Simply stated," Southern California Metropolitan Water District Board President Lloyd Allen wrote to Norton, "the action of your department is misguided, unjustified, unsupported by the law or the facts, and is an example of heavy-handed and unwarranted federal interference with intrastate water allocation matters."

"Our forefathers worked too hard to create the most productive farm region in the world," the letter added. "While [the Imperial Irrigation District] would prefer to have consensual agreements, we will not retreat from litigation to protect the lifeblood of our community."

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A Picture Book for Socialist Warriors

BOOK REVIEW BY JAY LEHR PH.D.

So in conclusion, the intent of this coffee table picture book containing fraudulent essays by socialist pseudo-scientists is to starve the developing world so as to slow or eliminate global population growth by defeating the only effective engine of human progress man has ever developed, namely capitalism. Or am I getting ahead of myself?

Fatal Harvest is in fact a beautifully illustrated communist manifesto aimed at mobilizing anti-capitalist socialist warriors around the globe to destroy all efforts to feed the less fortunate citizens of planet Earth, and thus to mercilessly starve them to death at the behest of their false Goddess "Gaia" whom they believe to be the soul of our planet.

This well crafted, often poetic false description of life as we are told exists today hides some of the most evil anti-human sentiments this writer has ever read. A thorough and objective review of this mountain of misrepresentation is nearly impossible by a trained scientist with knowledge of man's technological progress and a clear understanding of the scientific methodology necessary to reach sound conclusions.

"Perhaps the only positive value of this terrifying treatise is a warning to freedom-loving people, just how determined our evil opponents are to destroy civilization as we know it."

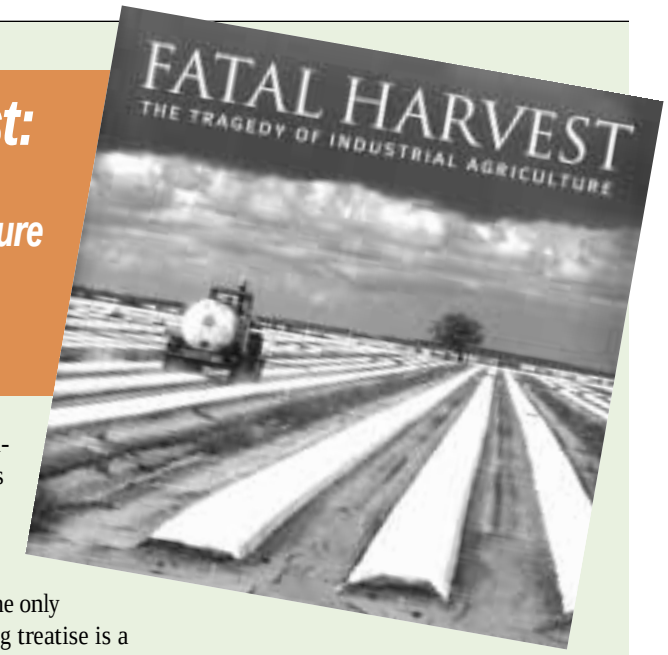
In spite of the book's breathtakingly beautiful color photos of our fruited plains, there is a limit to one's ability to read page after page of lies, distortions, misrepresentations and libelous accusations intended to mobilize a devil's army intent on destroying all progress achieved in man's most recent century. Perhaps the only positive value of this terrifying treatise is a warning to freedom-loving people, just how determined our evil opponents are to destroy civilization as we know it.

I'll now end my personal rant and let the book speak for itself. In the accompanying sidebar I quote a random selection of two dozen of the book's hundreds of false and inflammatory statements and provide the names and affiliations of the authors who contributed those shameful comments.

Jay Lehr Ph.D. is science director for The Heartland Institute.

Fatal Harvest: *The Tragedy of Industrial Agriculture*

by Andrew Kimbrell, editor
Island Press, July 2002
396 pages cloth



FOR MORE INFORMATION

WWW *Free Market Environmentalism*, by Terry L. Anderson and Donald R. Leal, offers an effective counter to radical environmentalism. The 241-page paperback (Palgrave, 2001) is available for $15.00 from the online store at **http://www.heartland.org**.

Random Lies

"Our conversion from agrarian, local, fully integrated food systems to industrialized, monocultured agricultural production has brought a staggering number of negative side effects, many of them unanticipated. Throughout the entire food system, we can trace this crisis as it manifests itself in soil erosion, poisoned ground waters, food-borne illnesses, loss of biodiversity, inequitable social consequences, toxic chemicals in foods and fiber, loss of beauty, loss of species and wildlife habitat, and myriad other environmental and social problems. To make the crisis even worse, we continue to export this destructive industrial system of food production around the Earth."
Douglas Tompkins, Foundation for Deep Ecology (p. xi)

"We happily munch on hamburgers without a thought to the forest and prairie being destroyed for cattle grazing or the immense cruelty in the raising and slaughtering of the animals. Mothers continue to prod their youngsters to eat their vegetables, unaware of the pesticide poisoning of our waters, farm workers, and wildlife that is involved in their production, not to mention the new human health and ecological risks of genetic engineering."
Andrew Kimbrell, Center for Food Safety (p. 1)

"Biotechnology introduces a tremendous new danger; biological pollution, a hazard on a scale with nuclear power."
Jerry Mander, Public Media Center (p. 18)

"Chemical poisons, biological attacks, air raids, pillage, and destruction ... it's agricultural warfare, and nature is the enemy. For decades agribusiness in its ads and propaganda has used war as the central metaphor for successful farming. In recent years the weapons used by industrial agriculture have grown ever more sophisticated, from genetic engineering to satellite communications. Meanwhile the casualties among nature, animals and people continue to mount. It's time to declare a 'cease-fire' and transform modern food production from war against the land to a marriage of ecology and agriculture."
Ron Kroese, Land Stewardship Project (p. 21)

"About half of the world's tropical forests have already been destroyed."
Hugh H. Iltis, University of Wisconsin (p. 36)

"The answer to the demographic dilemma is clear enough; we must abandon the fallacies of agricultural hope, for it is not a question of raising more food, but of raising fewer people."
Hugh H. Iltis, University of Wisconsin (p. 39)

"Industrial agriculture actually increases hunger by raising the cost of farming, by forcing tens of millions of farmers off the land, and by growing primarily high-profit export and luxury crops."
Andrew Kimbrell, Center for Food Safety (p. 50)

"A central component of the industrialized food system is the large-scale introduction of toxic chemicals."
Andrew Kimbrell, Center for Food Safety (p. 52)

"If you added the real cost of industrialized food—its health, environmental and social costs—to the current supermarket price, not even our wealthiest citizens could afford to buy it."
Andrew Kimbrell, Center for Food Safety (p. 54)

"Small farms produce more agricultural output per unit area than large farms."
Andrew Kimbrell, Center for Food Safety (p. 56)

"Clearly the way to create real choice for food consumers is to promote local, small-scale organic farming."
Andrew Kimbrell, Center for Food Safety (p. 59)

"Fence-row to-fence-row plowing, planting, and harvesting techniques decimate wildlife habitats, while massive chemical use poisons the soil and water, and kills off countless plant and animal communities."
Andrew Kimbrell, Center for Food Safety (p. 60)

"Biotechnology will destroy biodiversity and food security, and drive self-sufficient farmers off their land."
Andrew Kimbrell, Center for Food Safety (p. 62)

"Over the centuries, a wide diversity of maize—with varying leaves, heights, colors, and kernels—was selected and protected to perform different purposes. Today, modern corn is little more than a sad remnant of its forebears."
Andrew Kimbrell, Center for Food Safety (p. 77)

"The 'agri-monopoly' has no use for any farm that isn't gargantuan enough to furnish it with an endless supply of a single commodity."
Frederick Kirshenmann, Farm Verified Organic (p. 95)

"Increasingly, vegetables born of genetically engineered seeds, nurtured by chemical fertilizers, and doused with poisons threaten the health of consumers and the integrity of the environment."
Andrew Kimbrell, Center for Food Safety (p. 111)

"From satellite communications to complex computer programming, precision farming usurps the traditional role of farmers. It replaces local and personal knowledge of farming with high-cost computer-generated data. Ultimately, it leads farmers to become computerized 'sharecroppers' for major agribusiness corporations, and ever more reliant on chemicals and technology."
Andrew Kimbrell, Center for Food Safety (p. 261)

"Soon more than 90 percent of the average American's diet could be eligible for irradiation. As a result, the consumer has been made a guinea pig, testing these foods and facing potential health risks. Meanwhile leaks from irradiation facilities pose significant risks to public health and to the environment."
Michael Colby, Food and Water, Inc. (p. 271)

"Worldwide we are currently facing a pollination crisis, in which pollinators are disappearing at alarming rates as a result of habitat loss, pesticide poisoning, diseases, and pests."
Mrill Ingram et al, University of Wisconsin (p. 295)

"Globalized agriculture has devastated the environment, farm communities, and farmers. Corporations and international trade agreements continue to foist this dysfunctional agriculture on third world countries."
Debi Barker, International Forum on Globalization (p. 313)

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Reform of New Source Review Raises Concerns

BY S. FRED SINGER

The fog has not yet cleared from the Bush administration's decision to change the rules that govern the Clear Air Act. Both industry and environmentalists are expressing concern about the Bush plan: One side says it is ambiguous and could lead to more lawsuits, while the other claims human health and the environment will suffer.

At issue is the Clean Air Act's New Source Review (NSR) provision. When older power facilities make "major modifications," the law says they must also install modern technologies—something required of all newer plants. The NSR provision treats "routine maintenance" and "upgrades" differently, but the definitions are vague, leading environmentalists to accuse industry of sidestepping the law to add capacity.

The U.S. Environmental Protection Agency and the Department of Justice in 1999 cracked down, filing lawsuits against 51 companies in 13 states EPA considered to be in violation of the Clean Air Act. Tampa Electric reached an early settlement, agreeing that two of its power plants—Big Bend and Gannon—would commit to major pollution reductions. Cinergy Corp. and Virginia Power came to terms with authorities in principle but have since backtracked.

Plants that were targeted said the Clinton administration had a too-restrictive interpretation of New Source Review that ultimately discouraged any renovations, including those that would necessitate new pollution controls. The Bush administration agreed and has now formally outlined ways that make it easier for utilities to perform "routine maintenance" without triggering legal assaults.

What Bush Proposed

The thrust of the Bush plan, which takes effect almost immediately, is to reduce emissions without heavy government interference. Toward that end, it calculates total emissions on a plant-wide basis—not for specific pieces of equipment. Equipment can therefore be modified so long as the plant's overall emissions don't increase. Companies that voluntarily install new technologies to cut emissions will be given greater flexibility to make revisions "if they continue to operate within permitted limits."

The administration also has proposed rules that would make improvements to the "routine maintenance, repair and replacement" exclusion contained in EPA's New Source Review regulations. Specifically, the proposed rules would provide an as-yet-undefined facility-wide annual allowance for maintenance activities. Most projects involving the replacement of existing equipment with newer versions would constitute routine maintenance under the new rules. EPA expects these proposals to be finalized after a lengthy comment period, no later than year-end 2003.

Industry is displeased with the wording of the new policy. It's unclear, they say, what can be modified without triggering expensive new investments in scrubbers and other cleaning technologies. The confusion, says the Edison Electric Institute, will ultimately create another wave of lawsuits.

"We're frustrated that the agency has stopped short of advancing a specific proposal that would remove the perpetual threat of litigation hanging over the heads of power plant operators facing difficult decisions about whether to proceed with critical maintenance activities," says Quin Shea, EEI executive director - environment. "We have long urged EPA to draw a distinction between routine activities and those that clearly are major modifications that would require power plants to install additional emission controls."

The National Coal Council, meanwhile, supports the revised interpretation. It says the new rules will allow about 40,000 megawatts of increased electrical production to become available in the next three years from existing coal-fired generators. Such increased supply can occur, it adds, without increasing emissions per megawatt hour—all because of new clean coal technologies.

Critics React

The NSR reforms met with fervent opposition, however, not just from environmentalists and their Democratic supporters but also from nine attorneys general in the Northeast, who will fight to have the reforms reversed in a Washington federal appeals court. That will presumably keep alive all lawsuits related to New Source Review.

The Northeast has long complained about poor air quality and acid rain associated with power plants in the Midwest, South, and Mid-Atlantic states. Specifically, New York's Elliot Spitzer labeled the NSR reform plan "a Presidential pardon against polluters," while Sen. Joe Lieberman (D-Connecticut) called on EPA Administrator Christine Whitman to resign.

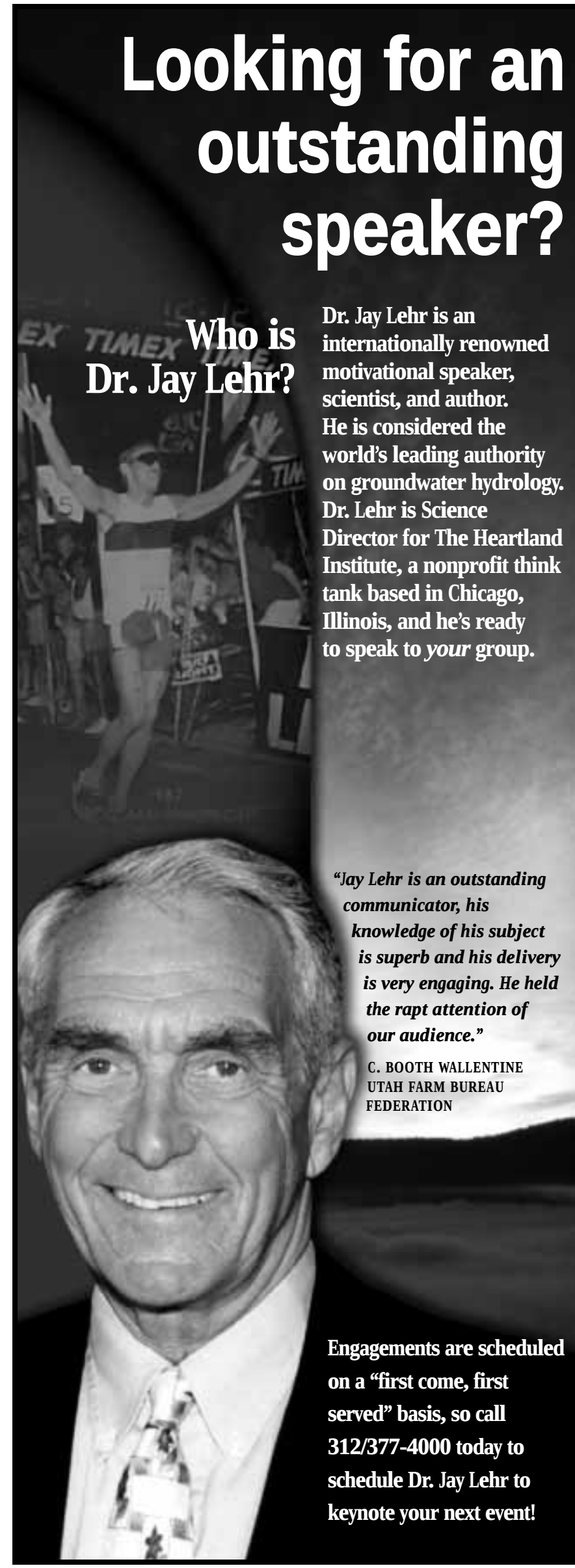
"Gov. Whitman has a good record and good intentions, but on her watch this administration has undertaken the biggest rollback in Clean Air history and scaled back countless other environmental protections," said Lieberman. "All this rule change will do is extend the life of the dirtiest industrial plants and worsen the lives of citizens ..."

Lieberman had pressed the administration to perform studies on what the potential health effects might be of reforming New Source Review, before making any final rulings. The administration countered its plan would encourage plants to install pollution controls without government interference.

While the decision to revamp parts of the New Source Review is unsurprising, the timing may speak volumes. The announcement came a few weeks after the congressional elections—a strong indication the administration did not want it to become fresh fodder for the Democrats. By extension, however, Democrats and environmentalists will certainly bring the subject to the fore during the 2004 elections.

By all accounts, the issue presents a clear distinction between the administration and key Democrats. It will no doubt become a factor in the next Presidential election, although at this point it appears it will remain clouded by matters of foreign policy and job creation.

S. Fred Singer, professor emeritus of environmental sciences at the University of Virginia and president of the Science and Environmental Policy Project, shares his thoughts on environment and climate news stories of the month. Singer's The Week That Was columns can be found at www.sepp.org.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Saving What Is Left of Jicarilla

A small New Mexico town fights for its survival against the U.S. Forest Service

J. ZANE WALLEY

According to a recent assay report, $20 million in fine gold lies beneath the ground on a few acres at Jicarilla, New Mexico. Miner Jerry Fennell owns the mining claims, and for about 30 years he has made a living and raised a family by panning the dry gulch and working a swimming pool-size pit behind his home with a pick and shovel. Fennell has no bulldozers or dump trucks. A wheelbarrow and a gentle burro appropriately named "Dusty" haul most of the ore.

His operation is small by design and philosophy. "I keep it that way because I don't want to disturb the land more than I have to. I just take enough gold to get by. I don't use any chemicals and durn little water." There is no natural source of water nearby, so Fennell has to haul in all he uses with an aging pickup truck.

Those days of "just getting by" soon will be over for Jerry Fennell if the U.S. Forest Service has its way.

According to Fennell, he recently received a letter from the Lincoln National Forest office saying he will be "charged with trespass" unless he files paperwork he says will put him out of business. "Once I file the paper (a plan of operation), the Forest Service will impose such a huge reclamation bond that I won't be able to afford it. I have watched them do it to my neighbors. They are all gone now. I am the last miner in the Jicarilla Mountains."

"Miner Jerry Fennell owns the mining claims, and for about 30 years he has made a living and raised a family by panning the dry gulch and working a swimming pool-size pit behind his home with a pick and shovel. Fennell has no bulldozers or dump trucks. A wheelbarrow and a gentle burro appropriately named 'Dusty' haul most of the ore."

Mining a Way of Life

Miners have worked the Jicarillas for centuries, and governments pushing them from their lands are not new. Spanish records show the Mescalero and Jicarilla Apaches dug turquoise in the remote mountains in 1598. The Spanish, and later the Mexicans, enslaved the Indians as labor to mine and separate the gold from the dirt in a wooden bowl called a "batea."

After the Republic of Texas defeated Mexico, Texans dug for the precious metal from about 1820 to 1850. When the area became part of the Territory of New Mexico, the U.S. Army forcibly removed the Apache to reservations in 1864.

Prospecting for the lode deposits by American miners began in the 1880s. The town of Jicarilla grew up around the claims and had a schoolhouse, a general store, and a population of some 300 during the early 1930s. Jicarilla lasted until about 1942.

End of an Era

Today, buildings that were formerly the store, post office, schoolhouse, and church remain. Fennell's home is the old general store. According to Fennell, the congregation of the Jicarilla Mountain Community Church used the old schoolhouse as a chapel until the U.S. Forest Service padlocked it and posted a sign reading, "All persons are prohibited under penalty of the law from committing any trespass."

Fennell produces an envelope stuffed with well-thumbed documents he has gathered over the past few years. "Look at this," he says as he shows a record from the pile. "This building has been used as a church since the thirties. How can the Forest Service just padlock and post it?"

He said he has repeatedly asked the Forest Service to prove they even own the land on which his claim is located. "All they have provided is a copy of an Executive Order signed by President Woodrow Wilson that indicates certain lands must be taken to connect the Lincoln National Forest to another National Forest. As best as I can determine through my research, this land may not even belong to the Forest Service."

Indeed, the title trail is incredibly convoluted. In addition to ownership by Spain, Mexico, and the Republic of Texas, Jicarilla has been part of three New Mexico counties over the past hundred years as political borders were shifted. The Lincoln County Tax Assessor's office stated: "There is really no way to know where all the records for Jicarilla are located."

"Fennell's troubles have begun to attract public attention in Lincoln County, an area that has seen much of its history bulldozed by federal land agencies."

A Right to His Claim

Lincoln National Forest Supervisor Jose Martinez, speaking from his office in Alamogordo, New Mexico, said the Forest Service didn't know what to do about the Jicarilla Mountain Community Church situation. "We have the lawyers working on it," he said. Asked if the Forest Service could be mistaken about its ownership of the tiny community, Martinez stated they were sure of their title. He further said: "Fennell could be charged if he did not file a plan of operation."

Lincoln National Forest Ranger Jerry Hawks stated in an interview that "Fennell has a legal right to his claim, but he is illegally occupying cabins that are on National Forest lands." Fennell counters by producing 1999 documentation from the Ninth Circuit Court of Appeals that states miners can live on their claims if they can produce possessory title and vested rights for structures and equipment. Fennell does have tax records showing he has paid taxes on the structures and equipment for years.

Fennell's troubles have begun to attract public attention in Lincoln County, an area that has seen much of its history bulldozed by federal land agencies. Publisher Ruth Hammond and reporter Doris Cherry of the *Lincoln County News* believe Jicarilla needs to be saved. "The Forest Service has destroyed too many of our historic buildings. Many of our residents have family who worked and are buried there. Our newspaper is going to work to save what is left of Jicarilla."

Fennell sits glumly on the steps of the Jicarilla Mountain Community Church and points to the U.S. Forest Service padlock and sign. "For years I have watched and cared for this building and the others. If the Forest Service pushes me out, in a couple of weeks what is left of this little village will be vandalized or bulldozed and burned by the feds." He pauses and looks sadly over what has been his home for decades, clears his throat and says quietly, "You know, it ain't the gold that has me reared up and fighting back. It is the saving of this place for our kids and grandkids. I'd hate to see it destroyed."

J. Zane Walley is an editor for the Paragon Foundation News Service.

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Air Act itself.

"We think what they are doing is contrary to the Clean Air Act, and it is fundamentally injurious to the American public," said Eliot Spitzer, attorney general of New York.

Spitzer was joined in the lawsuit by the state attorneys general for Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont.

The suit was filed on the same day the Environmental Protection Agency submitted its proposed New Source Review updates to the *Federal Register*. Publication in the *Federal Register* fulfills the government's obligation to notify the public of proposed new rules and establishes a time period during which the public may submit comments on the proposed rules. The public comment period on the NSR reforms closes March 3.

"The broader interpretation of NSR took U.S. industry by surprise. ... Facilities aborted or postponed regular maintenance and repairs necessary for efficient operation until the uncertainty over what would trigger NSR mandates could be resolved."

New Source Review Provisions

The Clean Air Act of 1970 required *newly constructed* plants and utilities to install the best available pollution abatement technology. In its 1977 amendments to the Act, Congress developed the New Source Review (NSR) program to reduce air pollution from *existing* facilities. When an existing facility undergoes a major expansion or refurbishment that would result in significant emission increases, New Source Review requires the facility to update its pollution abatement technologies.

Congress intended NSR to apply only to major expansion or refurbishment projects that increase emissions. But in 1999, EPA began calculating emission increases in a way that meant common maintenance, routine repairs, and routine equipment upgrades subjected existing facilities to costly technology overhauls.

The broader interpretation of NSR took U.S. industry by surprise. Maintenance and repair decisions made according to predictable and consistently enforced EPA guidelines were suddenly and retroactively challenged as violations of NSR. Facilities aborted or postponed regular maintenance and repairs necessary for efficient operation until the uncertainty over what would trigger NSR mandates could be resolved.

EPA Admits it Overreached

In 2002, EPA recognized it had overreached in departing from the plain language and long-established interpretation of the New Source Review program. The agency released a report on June 13, 2002 calling for a return in many ways to the pre-1999 New Source Review standards.

"Our reforms will remove the obstacles to environmentally beneficial projects, clarify NSR requirements, encourage emissions reductions, promote pollution prevention, provide incentives for energy efficient improvements, and help assure worker and plant safety," noted the EPA report. "Overall, our reforms will clarify and simplify the program so that industry will be able to make improvements to their plants that will result in greater environmental protection."

The agency made clear it was not seeking to cripple the NSR program, but rather to clarify its provisions. "The basic elements of the NSR program remain in place. All new major sources of air pollution will need to comply with the best control technology and existing sources which make major modifications and have a significant increase in actual emissions also will have to meet these requirements. The reforms simply clarify which changes at existing sources can be made without triggering NSR."

According to EPA Administrator Christie Whitman, flexibility is the key to encouraging power plants to invest in updating their emissions technology. The rigid post-1999 interpretation of NSR was counterproductive, she said, because it "deterred companies from implementing projects that would increase energy efficiency and decrease air pollution."

Clean Air or Political Games?

The lawsuit filed by New York Attorney General Spitzer and his colleagues takes aim at four elements of the proposed rules: provisions addressing new technology, new emissions tests, updated methods for calculating emission levels, and a focus on plant-wide emission levels rather than each of a plant's individual components.

"Our argument is ultimately going to be that these are illegal changes to the Clean Air Act and the EPA has gone beyond its authority in granting loopholes to smokestack industries," said Frank O'Donnell, executive director of the Clean Air Trust, a pro-regulation environmental activist group. The Trust is among several activist groups that have indicated they will join the suit on behalf of the state attorneys general.

"There was a need to make changes in the rules to keep up with how business has changed over the past 25 years," countered William Harnett, director of EPA's New Source Review enforcement program. "The rules we just went final on are things consistent with the law passed by Congress ... and will lead to greater environmental benefit."

Scott Segal, director of the Electric Reliability Coordinating Council, observed that the state attorneys general appear more interested in scoring political points against President Bush than in ensuring common-sense rules regarding air pollution. He also suggested the northeastern attorneys general were motivated by resentment that utilities in the rest of the country produce energy less expensively than their northeastern counterparts, who must navigate more state-level regulatory hurdles.

"Nationwide, more governors and attorneys general do support clarification," Segal said. "The northeast attorneys general reflect a minority opinion, unfortunately demonstrating their desire to address economic competitive concerns rather than environmental protection."

EPA spokesman Joe Martyak agreed. "There are those who would reach the conclusion that this appears to be more of a political step than based on other reasons," he said.

New Rules Upheld in Senate

Senate Democrats, led by Presidential candidate John Edwards of North Carolina, failed in their own attempt to delay or defeat the updated rules. On January 22 the Senate rejected by a 51-45 vote a Democratic rider to a federal budget bill that would have postponed any reform of New Source Review until after the National Academy of Sciences studied the issue.

"We've delayed already for 10 years," said Senate Environment Committee chairman James Inhofe (R-Oklahoma). "We need reform now."

As a compromise, Inhofe and other supporters of New Source Review reform voted to direct the National Academy of Sciences to study the issue and provide its report after the new rules take effect.

"We feel the Senate has chosen clean air and energy efficiency over Presidential politics," said Electric Reliability Coordinating Council spokesman Frank Maisano.

The updated New Source Review rules will not exist in a vacuum, but come in the context of, and will be subject to, other measures aimed at reducing air pollution. The Bush administration points out, for example, that it has already proposed a Clean Skies Initiative that will require a roughly 70 percent cut in power plant emissions of what EPA calls "the three worst air pollutants."

James M. Taylor is managing editor of Environment & Climate News.

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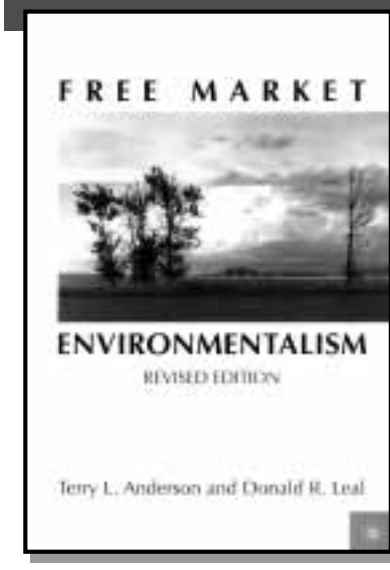

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ASBESTOS continued from page 1

Senator Christopher Dodd (D-Connecticut) cosponsored asbestos legislation in the 105th and 106th Congresses, and he has indicated he would be willing to raise the issue once again. Democrats Joe Lieberman (D-Connecticut) and Charles Schumer (D-New York) have also cosponsored asbestos tort reform bills in the past and would be open to compromise legislation.

"It's possible we could get together," said Dodd, who stressed the issue is a political hot potato and would have to be handled delicately. "If the bill is questionable, nothing will happen. They [Republicans] know ... if it's an anti-trial-bar bill, it will fail."

Bankrupting an Industry

"Without federal legislation," warn Michael Angelina and Jennifer Biggs of the consulting firm Tillinghast-Towers Perrin, "asbestos liabilities will haunt corporations, insurers, and reinsurers for years."

According to Roger Parloff of *Fortune* magazine, more than 200,000 asbestos tort claims are pending nationwide against more than 1,000 corporations. Most of the plaintiffs in those suits show no signs of physical harm from asbestos exposure, and many of the defendant companies never made asbestos products. Nevertheless, plaintiffs are being awarded unprecedented judgements based on highly speculative future harm, suspect science, and juries' preconceived notions regarding asbestos.

Joseph Stiglitz of Sebago Associates, an economic and public policy consulting firm, estimated in a December 2002 report that 61 companies have filed for Chapter 11 bankruptcy protection as a result of asbestos liabilities. Forty-seven states have at least one asbestos-related bankruptcy. The firms, representing a wide range of industries and employing more than 200,000 people the year before they filed for bankruptcy, include insulation maker Owens Corning; floor manufacturer Armstrong World Industries; chemical giant W.R. Grace; construction materials manufacturer USG Corp.; and auto-parts conglomerate Federal-Mogul Corp.

"[M]ore than 200,000 asbestos tort claims are pending nationwide against more than 1,000 corporations. Most of the plaintiffs in those suits show no signs of physical harm from asbestos exposure, and many of the defendant companies never made asbestos products."

With so few asbestos manufacturers remaining to be sued, the litigation has extended to companies only tangentially related to asbestos manufacturing. The burden is increasingly being borne by firms two and three steps removed from culpability.

"Total corporate asbestos liability to U.S. plaintiffs is now expected to reach $200 billion," notes *Fortune* magazine's Parloff. That's more than the economic damage attributed to the Enron scandal.

Marginal Plaintiffs

As recently as 15 years ago, observers predicted a total of 100,000 people might eventually file asbestos-related claims. The most recent forecasts predict between 1.3 million and 3.1 million claims, of which only about 570,000 already have been filed.

"The latest wave of litigants are people who have medical proof of exposure to asbestos but do not suffer from disease as a result of that exposure," explained Heartland President Joseph Bast in September testimony to the Senate Judiciary Committee, then chaired by Vermont Democrat Patrick Leahy. "Due to the low level of their exposure, most probably never will. Some 90 percent of new asbestos cases are brought by individuals with no physical impairment."

In his January 2003 testimony before the Senate Budget Committee, Michael Baroody offered one example of the success marginal plaintiffs are achieving:

"In October 2001," Baroody reported, "a Mississippi jury awarded $150 million to six plaintiffs in an asbestos case. Each was awarded $25 million. Not one of these six men displayed any symptoms at all. In fact, the lawyer who brought the case boasted to reporters, 'Most of these guys have not missed a day of work in their lives.' One plaintiff even boasted in his deposition that he was a jogger."

The piling on by plaintiffs with only minimal exposure to asbestos, and no evidence of having been harmed by that exposure, is leaving precious little money for the compensation of persons directly exposed to asbestos experiencing measurable harm.

"The system is bad for almost everyone involved," asserts Houston attorney Richard Faulk, "particularly the sick claimants. Absent some changes in the way asbestos claims are resolved, claimants who become truly sick in the future may not receive adequate compensation. Changing the current asbestos compensation system would be pro-claimant."

The plaintiff's bar appears to benefit most from the current system. "For plaintiff lawyers, this development was like the discovery of gold at Sutter Creek," said professor Lester Brickman of the Benjamin N. Cardozo School of Law in New York.

"Asbestos litigation today has come to consist, mainly, of unimpaired people reaping compensation at the expense of the genuinely injured," he added, "on the basis of prepared scripts with perjurious contents, backed by bogus medical evidence."

Dubious Science

Research confirms that employees of asbestos manufacturers and installation firms are at greater risk than the general public of developing asbestos-related medical conditions, especially respiratory conditions, particularly if they do not use protective breathing equipment. But research also confirms that asbestos poses virtually no health risk to persons who do not work directly with asbestos products. Environmental exposure is not a health threat; occupational exposure is.

Even persons who spend significant amounts of time in buildings with asbestos insulation are at little risk of harm, as asbestos products pose no risk unless they are carried on airborne dust particles and breathed into the lungs. And most airborne asbestos fibers are not dangerous; 90 percent take on a curly chrysotile form that is easily intercepted by the body's defense mechanisms before penetrating the lungs.

Efforts to remove asbestos from public school buildings—launched after the risk of occupational exposure was documented but before research could be conducted to determine the risk of environmental exposure—have proven costly

FOR MORE INFORMATION

WWW visit the Web site of the Asbestos Alliance at **http://www.asbestossolution.org** for information on the history and scope of the asbestos tort crisis and how it affects U.S. consumers and workers.

The Heartland Institute's online *PolicyBot* research database offers more than two dozen documents addressing the asbestos issue, including Michael Baroody's January 2003 testimony to the Senate Budget Committee (9 pages); the executive summary (16 pages) and full text (45 pages) of the December 2002 Sebago Associates report, *The Impact of Asbestos Liabilities on Workers in Bankrupt Firms*; and "Sizing Up Asbestos Exposure," a report by Tillinghast-Towers Perrin (4 pages). Point your Web browser to **http://www.heartland.org**, click on the *PolicyBot* button, and select the Environment - Asbestos topic.

Backyard Trash Burning

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and unnecessary. According to Rhodes College professors Ben Bolch and Harold Lyons, authors of *Apocalypse Not*, airborne asbestos is 1,000 times less dangerous to schoolchildren than a whooping cough vaccination.

Even among asbestos installers, the heightened risk of harm is directly correlated with the unrelated act of smoking. A 1990 study in *Science* magazine surveyed 17,800 installation workers with mixed fiber exposure. Of these, 471 were found to have developed lung tumors. Of these 471, only four were nonsmokers. Given that many smokers and some nonsmokers develop lung tumors regardless of their asbestos exposure, the study presents a remarkable picture of how the dangers of asbestos exposure have been exaggerated, even among those few persons most at risk.

"Asbestos lawsuits ... will one day undoubtedly take a place in the pantheon of great American swindles, next to the Yazoo land frauds, Credit Mobilier and Teapot Dome," predicted law professor Brickman.

Recommended Reforms

The Business Roundtable, an association of CEOs of leading corporations in the U.S., considers asbestos tort reform among its top 2003 agenda priorities. In a January statement to the press, the group indicated it would "work to develop a unified industry agreement on an asbestos-related liabilities proposal that can be enacted into law in 2003."

Similarly, the U.S. Chamber of Commerce puts asbestos tort reform high on its agenda. The 2003 Policy Priorities identified on its Web site note the group plans to "work to enact a comprehensive and rational solution to the burgeoning asbestos-related liability crisis."

Faulk and others have recommended creating a separate docket for asbestos-exposed claimants who have yet to experience health impairments attributable to that exposure. Rather than exhausting the system by awarding million-dollar judgments to plaintiffs who will likely never be harmed by their minimal exposure, plaintiffs who can show current health impairments should be given priority.

Faulk also recommends that companies only marginally connected with the manufacture and installation of asbestos should not be held liable for alleged asbestos harm. He points out that in Texas, a defendant generally cannot be held jointly liable for tort damages unless the defendant is more than 50 percent at fault. But the state carves out an exception for environmental and toxic tort cases, in which defendants can be held liable for full damages even if they are only 15 percent to blame.

Finally, Faulk recommends ending the practice of awarding punitive damages against already-bankrupt manufacturers of asbestos. "Punitive damages serve to punish a defendant for wrongdoing and to deter others that might engage in similar conduct," explains Faulk. It makes no sense, Faulk notes, to punish a defendant already bankrupt, and there remain no asbestos manufacturers to be deterred by a punitive damages award.

James M. Taylor is managing editor, and Diane Carol Bast is editor, of Environment & Climate News.

On NSR, Bush Should Ignore Knee-Jerk Opposition From Left

BEN LIEBERMAN

As was demonstrated by the November election, there aren't many issues that give Democrats an edge over Republicans. So the Democrats are trying to make the most of the few they do have, including the environment. This helps explain the grossly out-of-proportion attacks against the Bush administration's recent changes to the Clean Air Act's New Source Review (NSR) program.

Spinning New Source Review

NSR has long been recognized as the most problematic part of the Clean Air Act. The new rule's modest reforms represent the culmination of years of bipartisan efforts to fix it.

But that is not the way the story has been spun. The *New York Times* and other left-leaning media outlets editorialized against the NSR reforms with rhetoric so overheated it gave the impression Bush had just repealed the entire Clean Air Act. The *Washington Post* broadened the attack, claiming the administration's recent environmental actions may be "a harbinger of ever-more aggressive rollbacks of environmental regulations next year, when Republicans will control Capitol Hill."

"The lesson for Bush on environmental policy is clear: Do what you believe is right, and don't sweat the inevitable and predictable criticisms."

But the media attacks were mild compared with those from several 2004 Democratic Presidential hopefuls, who outdid each other denouncing the rule:

- Sen. John Edwards of North Carolina said "this gift to polluters promises more smog, more soot, and more premature deaths," all to be laid at the doorstep of a President who "has rolled back the Clean Air Act's protections."
- Sen. Joe Lieberman of Connecticut called on EPA Administrator Christie Whitman to resign over the matter.
- Sen. John Kerry of Massachusetts went even further, stating, "we don't just need a new EPA administrator, we need a new President."

Few listening to all of this could have imagined that the Bush final rule differs little from NSR reform proposals first announced in 1996 ... by the Clinton EPA.

History Lesson

If the Presidential hopefuls think they can ride a green wave to the White House, they had better take a look at history.

The President who polled the worst on environmental issues by far was Ronald Reagan, and his first term was racked with environmental scandal. His first EPA administrator and his first secretary of the Interior—the two highest environmental posts in the federal government—were forced out of office in heavily publicized fashion. And, though Reagan was not nearly the enemy of the environment his critics contended, he did little to try to appease the knee-jerk opposition from the left.

Politically, all of this cost Reagan nothing as he sailed to reelection in 1984. The lesson for Bush on environmental policy is clear: Do what you believe is right, and don't sweat the inevitable and predictable criticisms. Indeed, Bush could accomplish a lot by jettisoning the tired command-and-control approach favored by the environmental old guard, and replacing it with more innovative and promising solutions.

But there is also a cautionary lesson Bush can learn from his father. Rather than follow Reagan's lead, the elder Bush tried to appease the environmental establishment with gifts like the massive 1990 rewrite of the Clean Air Act. That tactic garnered little if any new support and did not help him at all in the 1992 elections.

No matter what it does, the current administration will be attacked by Democrats and their allies as anti-green. It remains to be seen whether the administration will respond with an alternative environmental vision or with futile attempts at "me too" appeasement.

Ben Lieberman is a senior policy analyst with the Washington, DC-based Competitive Enterprise Institute.

"[T]he elder Bush tried to appease the environmental establishment with gifts like the massive 1990 rewrite of the Clean Air Act. That tactic garnered little if any new support and did not help him at all in the 1992 elections."

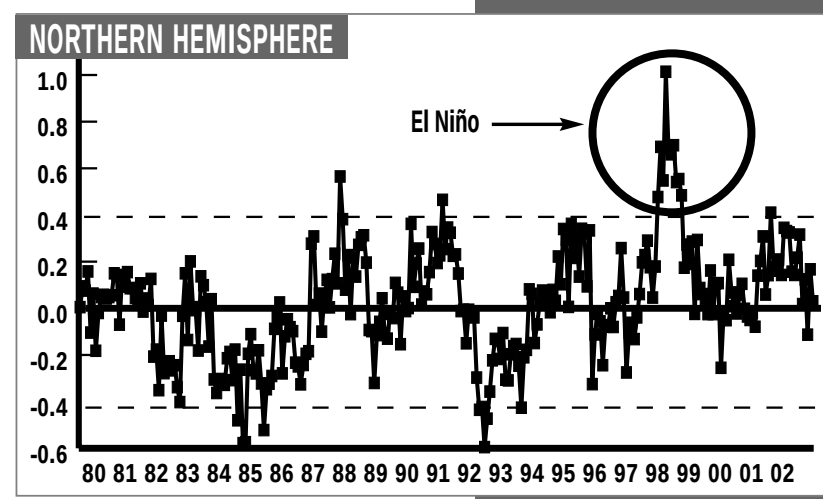
EARTH TRACK

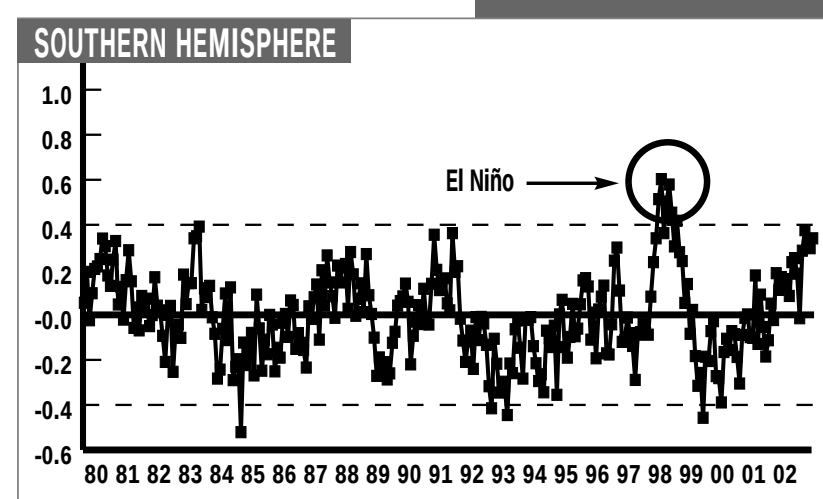
Each month, Earth Track updates the global averaged satellite measurements of the Earth's temperature. These numbers are important because they are real—not projections, forecasts, or guesses.

Global satellite measurements are made from a series of orbiting platforms that sense the average temperature in various atmospheric layers. Here, we present the lowest level, which climate models say should be warming. The satellite measurements are considered accurate to within 0.01°C.

DECEMBER 2002

The global average temperature for December, shown on page 1, was 0.18˚C above normal. The Southern Hemisphere's temperature departure, shown below, was 0.01˚C above normal; the Northern Hemisphere's, below right, was 0.14˚C above normal.





The data used to create these graphs can be found on the Internet at http://vortex.nsstc.uah.edu/data/msu/t2lt/tltglhmam_5.0.

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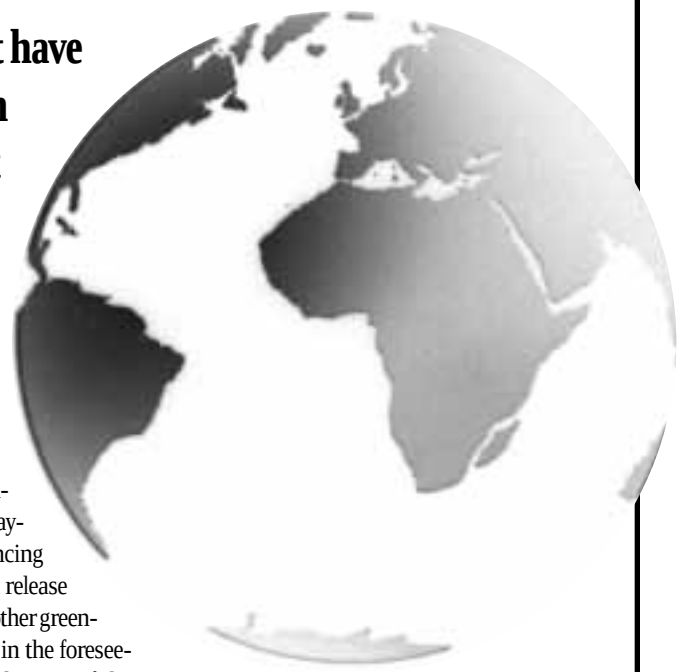
EDITORIAL

BY JAMES M. TAYLOR

First Step to What?

"[W]e really don't have to choose between baking our planet and returning to the economic stone age."



It was a treaty even Bill Clinton was afraid to submit to the Senate for approval.

Clinton's own Department of Energy figured it would lower GDP by $397 billion and double the cost of energy. WEFA Inc., a respected economic consulting firm, projected it would result in the loss of 2.4 million jobs.

The Kyoto Protocol would have caused California to lose 278,000 jobs, New York to lose 140,000 jobs, and unemployment rates to reach 10 percent in Arkansas, Louisiana, New Mexico, and Montana. State tax revenues would have plummeted as companies struggled to turn profits and fewer people were working, and for less money. Federal and state governments would have been forced to drastically cut existing social welfare programs or raise taxes dramatically.

And this is just the beginning, said Kyoto's supporters.

It's Climate, Stupid

Kyoto, according to its supporters, would prevent 0.14˚C of global warming over the next century. Essentially, whatever global warming would have occurred by 2100 would occur by 2106 under the new program. For this, we are asked to lose a full month's take-home pay every year, sentence our economy to a deep recession with no foreseeable end, and kick 2.4 million hard-working Americans into the unemployment line.

All this came to mind recently with news that Canada had ratified the Kyoto Protocol, meaning only Russia's procrastination prevents the treaty from going into effect. (Russia's act will mean countries representing 55 percent or more of emissions will have ratified the treaty, the trigger for its implementation. The U.S. has not ratified it, will not, and is not bound by its provisions.)

Incredibly, not all Americans are thrilled that we weren't snookered by radical environmentalists and United Nations bureaucrats into signing so ridiculous a treaty.

Connecticut Senator Joe Lieberman and Arizona Senator John McCain have introduced legislation to achieve Kyoto's destructive goals through the back door. Moore than two dozen states are considering legislation to do the same. The *New York Times*, always a voice of calm reason on environmental issues, congratulated Lieberman and McCain, saying their bill is "the best hope for getting a start on the problem."

A start?!

Well, of course it's only a start. Will the alarmists be content to see their global warming nightmare fade by a mere fraction of a degree over the next century? Is there any price they won't pay (or, rather, is there any price they won't make the rest of us pay) to address their alarmist vision of the future?

Warming Not a Threat

Fortunately, we really don't have to choose between baking our planet and returning to the economic stone age. More than 17,000 scientists have signed a petition saying, in part, "there is no convincing scientific evidence that human release of carbon dioxide, methane, or other greenhouse gases is causing or will, in the foreseeable future, cause catastrophic heating of the Earth's atmosphere and disruption of the Earth's climate." The petition is being circulated by the Oregon Institute of Science and Medicine, an independent research organization that receives no funding from industry.

Every time you hear a news story about the current year being "the hottest year yet" or "one of the 10 hottest years in history," it is important to remember just what numbers are being reported. The warming indicated by surface temperature measures is unlikely to actually exist. As most urban dwellers know, cities produce artificial heat islands that warm the immediate vicinity of the city relative to the surrounding region. During the past century, cities have grown around weather stations (which are typically located at city airports), skewing the temperature readings to indicate a false rise in temperatures.

Empirical data support this common-sense observation. A recent study in the *Australian Meteorological Magazine* studied urban heat island effects in Australia, Europe, and North America. The authors detected urban heat island effects even in small towns of roughly 1,000 people. Importantly, the heat island effect grew more pronounced as city population increased.

Satellite readings of temperatures in the lower atmosphere (an area scientists predict would immediately reflect any global warming) are unaffected by heat island effects, and are thought to be accurate within 0.01˚C. They show no warming since readings were begun more than 20 years ago. (See EarthTrack on page 17.)

The simple fact is the Kyoto Protocol and similar legislation are entirely unnecessary: the political equivalent of Chicken Little screaming about the sky falling. We've seen this before. The same medicine was prescribed 30 years ago ... to avert the next ice age. Remember that? Where would we all be now if we had heeded the "better safe than sorry" alarmists?

James M. Taylor is managing editor of Environment & Climate News.

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